

87-2086

No.

Supreme Court, U.S.

FILED

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CLERK

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1987

DAVID A. BOONE, et al.,  
*Petitioners,*

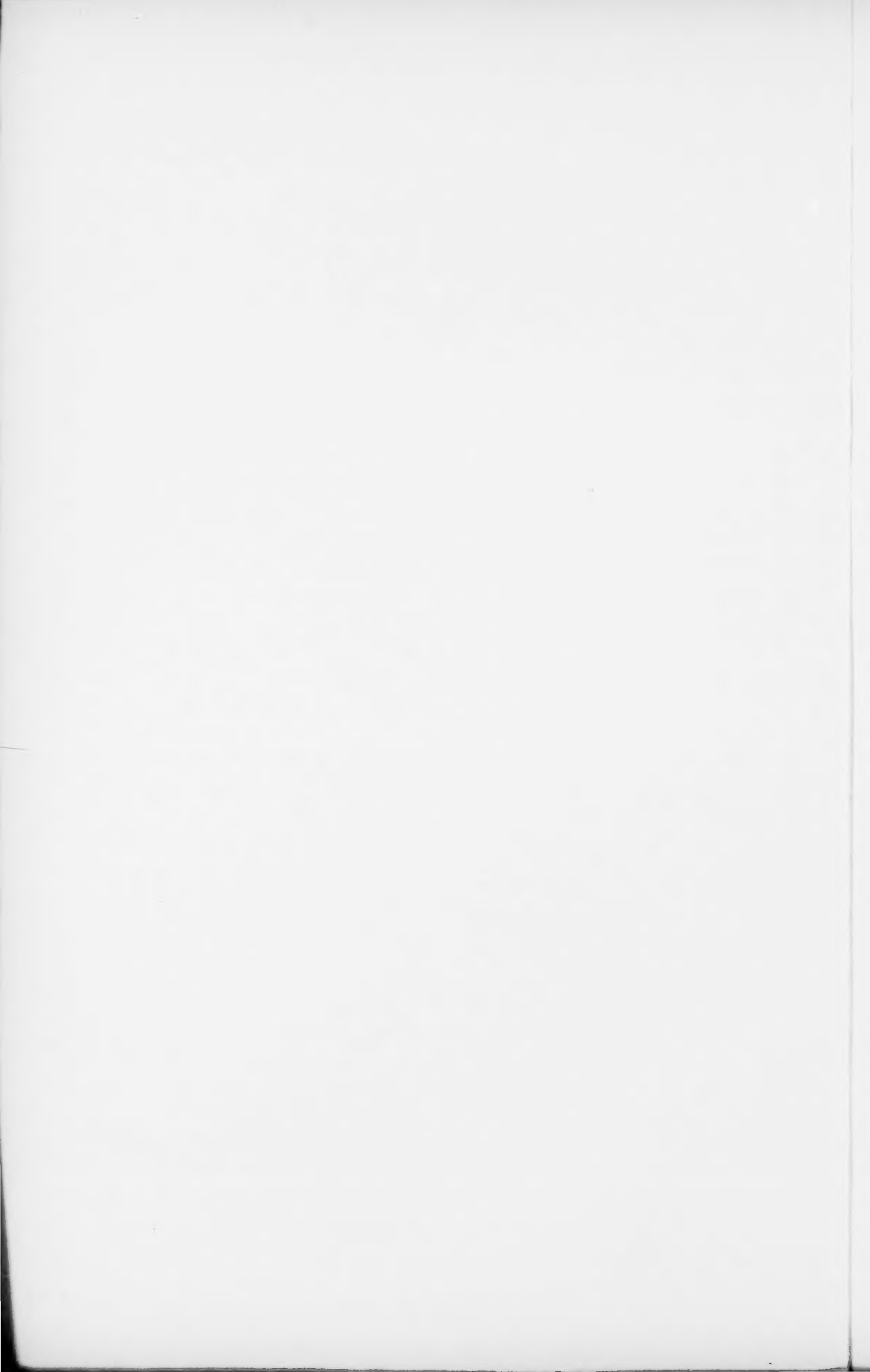
VS.

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, et al.,  
*Respondents.*

### APPENDIX

HERBERT F. KAISER\*  
The Alcoa Building, Suite 1600  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-1184  
*Attorney for Petitioners*  
*David A. Boone, et al.*

\* Counsel of Record



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APPENDIX A  
FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DAVID A. BOONE; STEPHEN P. FOX,  
Individually and as General  
Partners of DSC-3 Group, a  
California Limited Partnership  
and as General Partners of  
Market/Post, Ltd., a California  
Limited Partnership; DAVE  
GOGGIO; DONALD GOGGIO,  
individually and as General  
Partners of THREE G's, a  
California Limited Partnership,  
*Plaintiffs-Appellants,*

v.

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE, a Public Body  
Corporate and Politic of the State  
of California; CITY OF SAN JOSE, a  
Municipal Corporation and  
Subdivision of the State of  
California; THE KOLL COMPANY, a  
California corporation,  
*Defendants-Appellees.*

No. 87-15046  
D.C. No.  
CV-84-20772-WAI  
OPINION

Appeal from the United States District Court  
for the Northern District of California  
William A. Ingram, District Judge, Presiding

Submitted January 4, 1988—San Francisco, California

Filed March 1, 1988

Before: J. Clifford Wallace and Cecil F. Poole,\* Circuit Judges, and Robert J. Kelleher,\*\* District Judge.

Opinion by Judge Wallace

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## SUMMARY

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### Antitrust/State Government

Appeal from dismissal for failure to state a claim. Affirmed. The court held that some of appellants allegations fall within the *Parker* state action antitrust exception and that the others fall within the *Noerr-Pennington* doctrine.

Appellant developers began construction of an office building. They allege that they began construction with the understanding that the city would provide them with adequate parking in a proposed downtown parking building. Because of this understanding, the developers did not construct adequate on-site parking. Appellee Koll also built an office building. The proposed garage was relocated to the periphery of the redevelopment area. Unlike the developers, Koll planned and constructed adequate on-site parking. The developers allege that after they finished construction of their building, the city reneged on its promise to provide them with parking in the proposed municipal garage. The district court dismissed the developers' complaints with leave to amend. The first two claims for antitrust and civil rights violations in their second amended complaint were dismissed with prejudice for failure to state a claim.

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\*Judge Poole was drawn to replace Judge Kennedy. He has read the briefs, reviewed the record, and listened to the tape of oral argument held on 5/13/87, in case No. 86-2506.

\*\*Honorable Robert J. Kelleher, United States District Judge, Central District of California, sitting by designation.

[1] A city's anticompetitive acts that would normally rise to liability under the Sherman Act are shielded if the municipality acted pursuant to a clearly articulated and affirmatively expressed state policy to displace competition with regulation. This test requires a two-part inquiry. [2] Appellees correctly argue that they are immunized because all of their actions were carried out under the state authority of the redevelopment act. [3] The nature of activities enumerated in the Act expresses an intent by the legislature to authorize the city to do a number of things that are anticompetitive. [4] Decisions made by municipalities acting under the redevelopment act are reviewable in state courts. Concerns over federalism and state sovereignty dictate that the developers not be allowed to use federal antitrust law to remedy their claim that the city and the agency exceeded their authority under state law. [5] Ordinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances. [6] The developers have not alleged that the appellees' interest in urban redevelopment is illegitimate. Appellees' regulation of parking is facially rationally related to the ends of urban renewal. [7] Nor have the developers stated a claim under the procedural due process clause. Under state law, there is no basis for finding that the developers acquired a property right in the original parking structure. [8] Even if estoppel could create a property interest under state law, the developers' pleading is insufficient to state a claim for estoppel. [9] Developers allege that Koll conspired with city officials to amend the redevelopment plan, thereby limiting the amount of parking available to the developers, in order to drive down the value of their building. Efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition. [10] The developers four allegations in their complaint state nothing illegal and some lack specificity. [11] The developers' contend that one of three possible exceptions should apply. The first, known as the

sham exception, has not been sufficiently alleged. [12] The second states that illegal or fraudulent lobbying activities that would normally be immunized lose their protection if they occur in a judicial or quasi-judicial setting. [13] Nowhere in their complaint do the developers specifically allege that the agency and the council were acting as adjudicatory bodies when they carried out the complained of activities. [14] The third, the so-called co-conspirator exception, has been repudiated.

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### COUNSEL

Herbert F. Kaiser, San Francisco, California, for the plaintiffs-appellants.

Michael N. Khourie and James G. Gilliland, Jr., Khourie & Crew, P.C., San Francisco, California, for the defendants-appellees-San Jose

David T. Alexander, Jackson, Tufts, Cole & Black, San Jose, California, for the defendant-appellee-Koll

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### OPINION

WALLACE, Circuit Judge:

Boone and others (developers) appeal from an order dismissing their antitrust and civil rights action against the Redevelopment Agency of the City of San Jose (agency), the City of San Jose, and the Koll Company (Koll). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

### I

This case involves a decision by the agency and the City Council of San Jose (council) not to construct a multi-story

parking garage at a certain location in downtown San Jose. The agency is a municipal corporation created under California's Community Redevelopment Law, Cal. Health & Safety Code §§ 33000-33738 (redevelopment act), for the purpose of facilitating urban renewal in the downtown San Jose area. On November 17, 1978, the council, on recommendation of the agency, enacted a comprehensive plan for combatting urban blight in the city's downtown area. Under the plan, the city was to finance construction of a multi-story parking garage.

The developers are in the real estate business and, pursuant to the city's redevelopment plan, began construction of an office building in downtown San Jose in mid-1983. They allege that they began construction of this building with the understanding that the city would provide them with adequate parking in the proposed downtown parking building. Because of this understanding, the developers did not construct adequate on-site parking.

Koll is also a real estate developer. On March 29, 1984, the council approved an amendment to the redevelopment plan, which allowed Koll to build an office building in downtown San Jose. This amendment required the relocation of the proposed municipal parking garage to the periphery of the redevelopment area. The developers allege that in return for not protesting the amendment, unnamed city officials promised to reserve a section of the relocated municipal parking structure for the developers' exclusive use. Unlike the developers, Koll planned and constructed adequate on-site parking for its building.

The developers allege that after they finished construction of their building, the city reneged on its promise to provide them with parking in the proposed municipal garage. The developers subsequently brought suit against Koll, the agency, and the city which included claims under the Sherman and Clayton Antitrust Acts, 15 U.S.C. §§ 1, 2, 16, and the equal protection and due process clauses of the fourteenth

amendment, alleging that Koll had conspired with members of the agency and the council to relocate the proposed parking structure and not to give the developers exclusive parking in that structure, in order to force the developers to sell their building to Koll at a bargain price. This "forced sale," in turn, would allegedly have given Koll a monopoly on office space in the downtown San Jose area.

The district court dismissed the developers' initial and first amended complaints with leave to amend. The first two claims for antitrust and civil rights violations in their second amended complaint were dismissed with prejudice for failure to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b)(6). The pendent claims for promissory reliance and inverse condemnation were dismissed without prejudice so that they could be pursued in state court. The developers then timely filed this appeal from dismissal of the first two claims.

## II

We review the dismissal of an action for failure to state a claim *de novo*. *Fort Vancouver Plywood Co. v. United States*, 747 F.2d 547, 552 (9th Cir. 1984). Reading the allegations in the complaint in a light most favorable to the nonmovant, and taking all of the allegations in the complaint as being true, see *Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th Cir. 1985) (*Western Reserve*), cert. denied, 106 S. Ct. 795 (1986), we will affirm only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 42, 45-46 (1957).

We discuss first the claims against the city and agency and then the claim against Koll.

### A.

[1] The city and agency argue that they are immunized from liability by the state action exception from the antitrust laws



created in *Parker v. Brown*, 317 U.S. 341 (1943) (*Parker*). The basis of the state action exception is that the free market principles embodied by the Sherman Antitrust Act must give way to the countervailing principles rooted in federalism and state sovereignty that states must be free to act upon local concerns, even if these actions have anticompetitive results. See *id.* at 350-51. This exception was later expanded to protect municipalities in *Community Communications Co., Inc. v. City of Boulder*, 455 U.S. 40, 51-52 (1982) (*Boulder*). The Court ruled in *Boulder* that anticompetitive acts of a municipality that would normally give rise to liability under the Sherman Act are shielded if the municipality acted pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition with regulation. *Id.*; see also *Hallie v. City of Eau Claire*, 471 U.S. 34, 39 (1985) (*Hallie*). Pursuant to this test, we must undertake a two-part inquiry to determine whether state action immunity applies. We must first determine whether the California legislature authorized the challenged actions of the city and the agency. Then we must determine whether the legislature intended to displace competition with regulation. Both elements are prerequisites to proper application of the state action exception to municipal action.

A state policy is considered clearly articulated and affirmatively expressed if the statutory provision empowering the municipality's action plainly shows that "the legislature contemplated the kind of action complained of." *Hallie*, 471 U.S. at 44, quoting *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 415 (1978).

[2] Applying these principles to the instant case, the city and agency argue that they are immunized because all of their actions were carried out under the state authority of the redevelopment act. The purpose of the redevelopment act was to combat what the state legislature perceived to be a "serious and growing menace" created by blighted areas. Redevelopment Act § 33035(a). Redevelopment agencies, such as San

Jose's, were authorized by the redevelopment act to facilitate urban redevelopment. The agencies and the municipalities were granted powers by the redevelopment act as broad as the problem they faced. The redevelopment act declares that it is the policy of the state to eliminate blight "through the employment of all appropriate means," *id.* § 33037(a). To this end, the redevelopment act authorizes municipalities to enact rehabilitation plans, *id.* § 33131(a), zone and rezone and grant exceptions from building regulations and ordinances, *id.* § 33220(d), issue bonds, *id.* § 33341, and condemn property, *id.* § 33342. In addition, the redevelopment act specifically authorizes the redevelopment agency, with city council approval, to "amend or modify" redevelopment plans as necessary to carry out urban renewal, *see* Redevelopment Act § 33450, as was done here. These acts, which are clearly and affirmatively authorized by the California legislature, are precisely the types of activity that the developers challenge. Hence, the activities of the city and agency satisfy the first part of our two-prong test.

[3] Moreover, the nature of activities enumerated in these provisions expresses an intent by the legislature to authorize the city to do a number of things that are clearly anticompetitive. The power to zone and rezone, for example, by its very nature encompasses the power to exclude competition. These "state statutes need not require anti-competitive conduct for the exemption to apply when it is apparent that anti-competitive effects would result from a broad authority to regulate." *Mercy-Peninsula Ambulance Co. v. County of San Mateo*, 791 F.2d 755, 757 (9th Cir. 1986). We have ruled that similar broad grants of authority alone are sufficient to immunize "[v]irtually any anti-competitive effect," *id.* at 758, which "logically would result from [such] broad authority to regulate." *Id.*, quoting *Grason Electric Co. v. Sacramento Municipal Utility District*, 770 F.2d 833, 838 (9th Cir. 1985), *cert. denied*, 106 S. Ct. 886 (1986). Accordingly, we conclude that the second part of our test which requires that we find a



legislative intent to displace the free market with state regulation, has been satisfied.

This specific grant of authority, coupled with the broad power to remedy blight discussed above, convinces us that the state legislature "clearly articulated and affirmatively expressed" a policy to permit anti-competitive acts, and that the state legislature contemplated the kind of municipal action about which the developers complain. *See Hallie*, 471 U.S. at 39, 44. Our conclusion is in accord with that of other courts that have considered the state action immunity exception in light of redevelopment statutes similar to California's, which authorize instrumentalities of the state to engage in activities that could have anticompetitive consequences. *See, e.g., Cine 42nd Street Theatre Corp. v. Nederlander Organization, Inc.*, 790 F.2d 1032, 1048 (2d Cir. 1986); *Scott v. City of Sioux City*, 736 F.2d 1207 (8th Cir. 1984), *cert. denied*, 471 U.S. 1003 (1985); *Reasor v. City of Norfolk*, 606 F. Supp. 788 (E.D. Va. 1984).

Nevertheless, the developers argue that the redevelopment act does not apply because downtown San Jose was not a "blighted area" at the time the city acted. By its own terms, the redevelopment act was intended to promote redevelopment of "blighted areas." Redevelopment Act § 33037(a). Such areas are defined as those that constitute a "serious physical, social, or economic burden on the community" that they "cannot reasonably be expected to be reversed or alleviated by private enterprise acting alone." Redevelopment Act §§ 33030, 33032. According to the developers, the necessary prerequisites to finding blight were absent at the time the city used the redevelopment act to amend the plan. From this, they conclude that the city and agency cannot rely on the statute to immunize their actions.

Because this is an appeal from a dismissal for failure to state a claim, we must assume as true all factual allegations of material fact in the developers' complaint. *See Western*

*Reserve*, 765 F.2d at 1430. Thus, we must assume, as the developers allege, that the council erroneously determined that, at the time of the amendment, its downtown area was eligible for action under the redevelopment act. Nevertheless, it does not follow that the city and agency would be stripped of antitrust immunity merely because they imperfectly exercise their power under state law. A similar claim was made in *Llewellyn v. Crothers*, 765 F.2d 769, 774 (9th Cir. 1985) (*Llewellyn*), where we ruled that Oregon's Worker's Compensation Department was immune from antitrust liability, despite allegations made by a group of chiropractors that the Board had erroneously set reimbursement rates for chiropractic services artificially low. Although *Llewellyn* involved the action of a state agency, and not a municipality, the same concerns that were raised in *Llewellyn* about the role of this court in reviewing decisions by state actors apply to this case:

" 'Ordinary' errors or abuses in the administration of powers conferred by the state should be left for state tribunals to control." . . . A contrary rule would tempt aggrieved parties to forego available state corrective processes in hopes of obtaining the treble damages remedy conferred by the Sherman Act. Here state corrective processes were available, and the aggrieved parties could resort to them.

*Id.* at 774 (citations omitted).

[4] Decisions made by municipalities acting under the redevelopment act are reviewable in state courts. *See, e.g., Berggren v. Moore*, 61 Cal. 2d 347 (1964); *Kehoe v. City of Berkeley*, 67 Cal. App. 3d 666 (1977); *Babcock v. Community Redevelopment Agency of the City of Los Angeles*, 148 Cal. App. 2d 38 (1957). The developers have filed suit in state court, seeking review of the city's and agency's action. In this situation, the concerns over federalism and state sovereignty raised in *Hallie* and *Llewellyn* dictate that the developers not be allowed to use federal antitrust law to remedy their claim

that the city and the agency exceeded their authority under state law. They do not forfeit their immunity merely because their execution of the powers granted to them under the redevelopment act may have been imperfect in operation. See *Llewellyn*, 765 F.2d at 774.

The developers next argue that their allegations that city officials acted in bad faith and as participants in a larger conspiracy, if proven, would strip the city of its antitrust immunity. This claim is also controlled by *Llewellyn*. There, we affirmed a summary judgment against the plaintiffs on their antitrust claims, "despite the possibility of improper motivation on the part of [agency officials]," on the grounds that:

The availability of *Parker* immunity . . . does not depend on the subjective motivations of the individual actors, but rather on the satisfaction of the objective standards set forth in *Parker* and authorities which interpret it. This must be so if the state action exemption is to remain faithful to its foundations in federalism and state sovereignty. A contrary conclusion would compel the federal courts to intrude upon internal state affairs whenever a plaintiff could present colorable allegations of bad faith on the part of defendants.

765 F.2d at 774.

For the reasons discussed previously, the city and agency were acting pursuant to a clearly articulated and affirmatively expressed state policy to replace competition, and therefore the objective standards set forth in *Parker* and *Llewellyn* are met. The district court properly dismissed the developers' antitrust claims against the city and agency.

## B.

The developers' next claim, brought pursuant to 42 U.S.C. § 1983, alleges that the city and agency denied them their

fourteenth amendment equal protection, substantive due process, and procedural due process guarantees. We first discuss their equal protection and substantive due process claims.

The developers base their equal protection and substantive due process challenge on the claim that the city and agency induced them into constructing an office building through promises of providing adequate parking facilities, and then denied them access to such facilities, which were financed in part through tax assessments on the developers' property. Such actions by the city and agency are alleged to have discriminatorily deprived them of economically viable use of their investment and to have unlawfully diverted funds from property tax assessments to Koll's exclusive use.

[5] The standard governing attacks on economic regulations brought under the equal protection clause is well established. "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions . . . our decisions presume the constitutionality of the [ordinances] . . . and require only that the [ordinance] challenged be rationally related to a legitimate state interest." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Similarly, "ordinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances." *Scott v. City of Sioux City*, 736 F.2d 1207, 1216 (8th Cir. 1984), *cert. denied*, 471 U.S. 1003 (1985); *see Construction Industry Association of Sonoma County v. City of Petaluma*, 522 F.2d 897, 906 & n.11 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976).

[6] Here, the developers have not alleged that the interest of the city and agency in urban redevelopment is illegitimate. Such a claim would be patently frivolous. Moreover, the municipality's regulation of parking is facially "rationally

related" to the ends of urban renewal. Thus, we find no violation of the developers' equal protection or substantive due process rights.

[7] Nor have the developers stated a claim under the procedural due process clause. To do so, the developers must allege facts from which we can conclude that they had a vested property right to parking in the proposed garage. Whether a property right exists is determined by state law. The developers allege that they acquired a property right in the original parking structure, either by the city and agency issuing a building permit, or by common-law estoppel. Under state law, however, we find no basis for such a claim of entitlement under either theory.

The developers' reliance on the building permit issued to them by the city is misplaced. In their complaint, they did not allege that the city promised to provide parking in the building permit itself. The complaint states only that the permit was issued after discussions with the city and agency officials concerning the proposed garage. Absent allegations of a specific provision in the building permit requiring the city to provide parking, the permit alone is insufficient to create a cognizable property interest.

The claim that a property interest in the proposed parking facility was created by estoppel is similarly deficient. The developers have cited no case, nor have we found one, to support their claim that a property interest can be created by estoppel under the facts of this case.

[8] We need not reach that issue, however, because even if estoppel could create a property interest under California law, their pleading is insufficient to state a claim for estoppel. The alleged promises on which the developers argue they relied are pleaded in an entirely conclusory fashion. Moreover, the complaint fails to disclose facts which establish that these promises were made by persons with the authority, or

apparent authority, so that the developers, as experienced businessmen, would be justified in relying on them. Nowhere in any of their three complaints do they identify who made the promises, or what the person's legal authority, if any, was to make them. Nowhere in their complaint is there an allegation that the council promised them parking. Under the redevelopment act, it appears that such authority is granted only to the council. *See, e.g.*, Redevelopment Act § 33366-67 (city council approval required for redevelopment plan); *id.* § 33368 (decision of city council will be final); *id.* § 33450 (redevelopment plan can be amended only by city council, subject to referendum). In short, the developers plead no facts from which we can infer that their reliance on the alleged promises was in any way justifiable. Absent such allegations, the developers cannot properly assert a claim of estoppel.

### III

[9] The developers also brought antitrust claims against Koll, alleging that it conspired with city officials to amend the redevelopment plan, thereby limiting the amount of parking available to the developers, in order to drive down the value of their building. Koll argues, and the district court ruled, however, that Koll's involvement in the alleged conspiracy consisted of legitimate lobbying activities that are immunized from liability by the *Noerr-Pennington* exception to the Sherman Act. In *United Mine Workers v. Pennington*, 381 U.S. 657 (1965) (*Pennington*), the Supreme Court ruled that

[E]fforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition. Such conduct is not illegal, either standing alone or as a part of a broader scheme itself violative of the Sherman Act.

*Id.* *Id.* at 670; *see also Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961) (*Noerr*). A contrary rule, according to the Court, could impede first



amendment rights to petition the government. *See* 365 U.S. at 137-38.

In our analysis of this issue, we will first determine whether the activities of Koll are of the type that the *Noerr-Pennington* doctrine seeks to protect and then discuss whether any exceptions to the *Noerr-Pennington* protections apply. Our review of the developers' arguments, however, is guided in part by the fundamental first amendment values that the *Noerr-Pennington* doctrine is designed to protect. In order not to chill legitimate lobbying activities, it is important that a plaintiff's complaint contain specific allegations demonstrating that the *Noerr-Pennington* protections do not apply. *See Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of Culinary Workers*, 542 F.2d 1076, 1080-81 (9th Cir. 1976) (*Franchise Realty*), *cert. denied*, 430 U.S. 940 (1977). Conclusory allegations are insufficient to strip them of their *Noerr-Pennington* protection. *Id.* at 1081. Although we may be more generous in reviewing complaints in other contexts, our responsibilities under the first amendment in a case like this one require us to demand that a plaintiff's allegations be made with specificity. *Id.* at 1082.

#### A.

[10] The developers' complaint contains four basic allegations against Koll: (1) that Koll "developed close relationships" with city officials; (2) that Koll made "false reports and misrepresentations" to the council concerning the availability of parking downtown; (3) that Koll had "ex parte secret contact[s]" with city officials that culminated in "secret . . . agreements" to amend the redevelopment plan; and (4) that Koll "hired key city officials" and "made direct payments" to city and agency officials.

The first allegation goes to the very heart of the *Noerr-Pennington* doctrine. Successful petitioning of government often depends on the development of close relations between

government officials and those who seek government benefits. Indeed, cultivating close ties with government officials is the essence of lobbying. Such conduct certainly falls within the ambit of the *Noerr-Pennington* doctrine.

The same is true of the developers' allegation that Koll misrepresented facts concerning the availability of parking in the redevelopment district. As pointed out by the Court in *Noerr*, attempts to influence public officials may occasionally result in "deception of the public, manufacture of bogus sources of reference, [and] distortion of public sources of information." 365 U.S. at 140. Such deception, as "reprehensible as it is, can be of no consequence so far as the Sherman Act is concerned." *Id.* at 145. While we do not condone misrepresentations, we trust that the council and agency, acting in the political sphere, can "accommodate false statements and reveal their falsity." *Clipper Express v. Rocky Mountain Motor Tariff Bureau, Inc.*, 674 F.2d 1252, 1271 (9th Cir.) (*Clipper Express*), amended, 690 F.2d 1240 (9th Cir. 1982), cert. denied, 459 U.S. 1227 (1983).

The developers' allegations of shadowy secret meetings and covert agreements do not take their claim outside of *Noerr-Pennington*. They have not alleged the nature of these secret agreements and secret meetings, nor have they identified the "key city officials" allegedly involved. Moreover, they have not alleged that these activities were either illegal or outside the "traditional protection[s] afforded this activity by the First Amendment." *Franchise Realty*, 542 F.2d at 1085. Most notably, the developers did not allege that these activities were perpetrated for reasons other than legitimate petitioning of government.

Even if they had made such specific allegations, the behavior they ostensibly describe falls squarely within the *Noerr-Pennington* doctrine. In *In re Airport Car Rental Antitrust Litigation*, 766 F.2d 1292, 1295 (9th Cir. 1985), cert. denied, 106 S. Ct. 2248 (1986), we ruled that private meetings between



government officials and individuals seeking to monopolize the airport car rental market was a form of advocacy protected by the *Noerr-Pennington* rule. The redevelopment process, by its very nature, allows for ex parte deliberations between decision makers and advocates of a particular view. See *In re Airport Car Rental Antitrust Litigation*, 521 F. Supp. 568, 588 (N.D. Cal. 1981) (evidence of a series of ex parte meetings between defendants and public officials resulting in a contract to exclude competitions "prove[s] nothing other than a classic case for application of the *Noerr-Pennington* doctrine"), *aff'd*, 693 F.2d 84 (9th Cir. 1982), *cert. denied*, 462 U.S. 1133 (1983).

The developers' allegations of "payments to" and the "hiring of" key city officials suffer a similar fate. Again, they make these allegations in the most conclusory of fashions. We are not told who, when, how much, or for what purpose. More important, even if these allegations had been made with the requisite specificity, the alleged activities are facially valid. Former government officials are often times hired by organizations seeking to petition government. Their expertise makes them particularly well suited for such a role. Payments to public officials, in the form of honoraria or campaign contributions, is a legal and well-accepted part of our political process. As stated by the Seventh Circuit:

Clearly, allegations concerning campaign contributions do not convert into a Sherman Act violation conduct which *Noerr* held was not covered by the Act. We do not condone the giving or acceptance of campaign contributions as inducements to support the donor's interests in the legislative process. We merely hold that this conduct was not intended to be covered by the Sherman Act.

*Metro Cable Co. v. CATV of Rockford, Inc.*, 516 F.2d 220, 231 (7th Cir. 1975) (*Metro Cable*); see also *Noerr Motor Freight, Inc. v. Eastern Railroad Presidents Conference*, 155 F. Supp.

768, 803-04 (E.D. Pa. 1957), *aff'd*, 273 F.2d 218 (3d Cir. 1959), *rev'd*, *Noerr*, 365 U.S. 127 (1961) (allegations that competitors made campaign contributions and worked in close liaison with public officials are insufficient to state an antitrust claim).

The developers did not allege that the hiring of, or payments to, the public officials was otherwise illegal. Thus, even if these alleged activities were carried out solely to influence the agency and the council, they fall within the *Noerr-Pennington* doctrine.

### B.

That the complained about conduct is the type protected by the *Noerr-Pennington* rule does not end the dispute. Such conduct may be excepted from the protection in certain circumstances. The developers' argument that such exceptions apply will now be considered.

[11] While the developers' brief is far from clear, they appear to contend that we should apply any one of three possible exceptions to the *Noerr-Pennington* doctrine. The first exception that they argue is known as the "sham exception," and is based on a suggestion made by the Court in *Noerr* that when "a publicity campaign, ostensibly directed toward influencing governmental action, is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor . . . [then] application of the Sherman Act would be justified." 365 U.S. at 144. The developers have neither alleged the existence of a publicity campaign nor that Koll was not genuinely seeking official action from the city and agency. Such allegations are necessary to state a claim under this exception. *See Franchise Realty*, 542 F.2d at 1080-81.

[12] The developers next contend that their allegations of misrepresentations, payments to public officials, and "secret

backroom dealings" on the part of Koll fall within a second exception to *Noerr* created in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (*Trucking Unlimited*). In *Trucking Unlimited*, the Court ruled that illegal or fraudulent lobbying activities that would normally be immunized by *Noerr-Pennington* lose their protection if they occur in a judicial or quasi-judicial setting:

There are many other forms of illegal and reprehensible practice which may corrupt the administrative or judicial processes and which may result in antitrust violations. Misrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process.

*Id.* at 513; see also *Clipper Express*, 674 F.2d at 1271. Our analysis of the developers' claim, therefore, is guided in part by the role played by the agency and the council when the plan was amended and the developers' parking was limited. If the agency and the council were acting as adjudicative bodies, the range of lobbying activities immunized by *Noerr-Pennington* would be much narrower.

[13] We faced a similar situation in *Franchise Realty*. In that case, the plaintiff sued two associations of restaurant and hotel employers which had allegedly conspired to oppose the plaintiff's efforts to secure building permits from the San Francisco Board of Permit Appeals. 542 F.2d at 1078. We ruled that the Board of Permit Appeals was "as much a political as an adjudicatory body." *Id.* at 1079. Like the Board of Permit Appeals in *Franchise Realty*, the agency and the council have broad discretion to amend the plan, and approve or disapprove of new projects, whenever they deem it is "necessary or desirable" to carry out the ends of redevelopment. Redevelopment Act § 33450. Determination of what is "necessary or desirable" is vested exclusively with the agency and the council. As in *Franchise Realty*, "[t]he absence of more definite standards suggests that the [agency] is as much

a political as an adjudicatory body." 542 F.2d at 1079. Indeed, nowhere in their complaint do the developers specifically allege that the agency and the council were acting as adjudicatory bodies when they carried out the complained of activities. Rather, they alleged that they were barred access to the city's administrative and "legislative" processes.

The developers now specifically contend that the agency and council's decision was adjudicatory. Their reliance on *Horn v. County of Ventura*, 24 Cal. 3d 605 (1979), for this proposition is misplaced. In *Horn*, the court ruled that the approval of a subdivision redevelopment by a planning department that would result in a "substantial" deprivation in the value of adjoining property was an adjudicatory act to which procedural due process protections attached. *Id.* at 612. The court based its holding primarily on the fact that "[s]ubdivision approvals, like variances and conditional use permits, involve the application of general standards to specific parcels of real property. Such governmental conduct, affecting the relatively few, is 'determined by facts peculiar to the individual case' and is 'adjudicatory' in nature." *Id.* at 614. The court distinguished this situation from one involving "general rezoning" of a large area, which is more akin to a legislative process. *Id.* at 613; see also *San Diego Building Contractors Association v. City Council*, 13 Cal. 3d 205, 208 (1974), *appeal dismissed*, 427 U.S. 901 (1976). A redevelopment plan and its amendments obviously involve a large area and affects virtually every member of the community. In addition, all amendments to the redevelopment plan must be approved by the city council, which is defined by the redevelopment act as a "legislative body." Redevelopment Act § 33007. Thus, even though proceedings before the agency have some of the trappings normally associated with adjudicatory procedures, all final decisions are made by the council, a distinctly legislative body. Although this case does not require us to draw a bright line between adjudicative and legislative processes, these considerations convince us that, like the Board of Permit Appeals involved in *Franchise Realty*,

the agency and council were carrying out essentially legislative tasks in amending the plan.

The legislative nature of the city's decision distinguishes this case from *Ernest W. Hahn, Inc. v. Codding*, 615 F.2d 830 (9th Cir. 1980) (*Hahn*). There, the plaintiff (*Hahn*) alleged that the defendant (*Codding*) had filed a series of frivolous lawsuits solely to interfere with *Hahn's* attempt to build a shopping center. *Id.* at 836. We applied the *Trucking Unlimited* exception on the grounds that "*Codding* has invoked the judicial process not once, but thirteen times, in what the *Hahn* complaint describes as a thus far successful effort to prevent a competitor from entering the marketplace." *Hahn*, 615 F.2d at 842. *Hahn* clearly involves the misuse of judicial and not legislative processes. We conclude that the *Trucking Unlimited* exception to the *Noerr* protection does not apply to the actions of the city and the agency.

[14] The developers' final argument is that because they have alleged that city officials were active participants in the alleged conspiracy, we should apply the so-called "co-conspirator" exception to *Noerr-Pennington*. In *Harman v. Valley National Bank of Arizona*, 339 F.2d 564, 566 (9th Cir. 1964), a case decided before *Pennington*, we suggested in dicta that *Noerr* might not apply if a public official were a participating conspirator in the alleged agreement to restrain trade. *See id.* This view, however, was repudiated by *Pennington*. As we stated in *Sun Valley Disposal Co. v. Silver State Disposal Co.*, 420 F.2d 341, 342-43 (9th Cir. 1969):

The Supreme Court decisions have eroded the authority of . . . *Harman* . . .

....

*Pennington* held that efforts to influence public officials are not illegal even if part of a broader anti-competitive scheme. *Harman* was based on this

view that an attempt to influence an official when part of a larger scheme is subject to the federal anti-trust laws.

Thus, *Noerr-Pennington* cannot be circumvented by merely alleging that a government official was involved in the alleged conspiracy. *See also Metro Cable*, 516 F.2d at 230 (rejecting co-conspirator exception because it would "abrogate" the *Noerr* doctrine).

#### IV

The developers have been given two opportunities to amend their complaint to state a cause of action against the city and Koll. The allegations made against the city in their second amended complaint fall squarely within the *Parker* state action antitrust exception. Their allegations against Koll consist of activities clearly protected by the *Noerr-Pennington* doctrine. Their civil rights claims are facially deficient. Therefore, the district court's dismissal of the developers' action is affirmed.

AFFIRMED.

**Appendix B**

United States District Court  
Northern District of California

NO. C-84-20772-WAI

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's, a  
California Limited Partnership,  
Plaintiffs,

- vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a Municipal Corporation and Subdivision of the State of  
California; Frank Taylor, The Koll Company,  
a California Corporation,  
Defendants.

**MEMORANDUM OF DECISION**

[Filed Jan. 24, 1986]

Clerk's Record Docket No. 115

Plaintiffs have filed herein their Second Amended Complaint in which they set forth two causes of action against all defendants: (1) Conspiracy to violate federal antitrust laws; and (2) violation of 42 U.S.C. § 1983. Plaintiffs assert two causes of action against defendants City and Redevelopment Agency only: (1) promissory estoppel; and (2) inverse condemnation. Defendants and each of them have moved to dismiss each of the causes of action asserted by plaintiff for failure to state a claim upon which relief may be granted. (Fed. R. Civ. Pl. 12(b)(6)).



## I

## FEDERAL ANTITRUST CLAIM

The motion of defendants to dismiss the First Cause of Action is Granted Without Leave To Amend. Plaintiffs' claims against defendants City of San Jose and Redevelopment Agency of the City of San Jose are barred by the doctrine of "state action immunity"; the action against defendant The Koll Company is barred by the so-called *Noerr-Pennington* doctrine.

The allegations of the First Cause of Action are essentially similar to those contained in the First Amended Complaint, except that plaintiffs now allege in addition the procedural deficiencies committed by the defendant City and the defendant Redevelopment Agency leading to the approval of the project of defendant The Koll Company; that the defendant City and defendant Redevelopment Agency destroyed certain tapes of meetings, and that defendant The Koll Company made direct payments of money to personnel employed by defendant City and the defendant Redevelopment Agency and hired former employees of the defendant City, and that defendant The Koll Company undertook to bar the access of plaintiffs to judicial tribunals.

In order to sustain the existence of "state action immunity" it must appear that the municipality seeking the immunity acted pursuant to a state policy to displace competition with regulation and that particular policy must be clearly articulated and affirmatively expressed. *Lorrie's Travel and Tours, Inc. v. SFO Airporter, Inc.*, 753 F.2d 790 (9th Cir. 1985). A clearly articulated state policy is contained within the provisions of California Health and Safety Code §§ 33006-33885. In particular, Health and Safety Code § 33037(a) contains the language:

. . . to protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the communities in which they exist by remedying such injurious conditions through the employment of all appropriate means.

Additionally, §§ 33125(c), 33131(a), 33220(d), 33341, 33342 and 33396 contain express grants to employ the means to accom-



plish redevelopment, all of which are pertinent and clearly articulated against the background of this case as alleged in the Second Amended Complaint.

Furthermore, it will be assumed that the legislature contemplated the implementation of the challenged restraint if it was a "necessary or reasonable consequence of engaging in the authorized activity." *Lorrie's Travel, supra; Springs Ambulance Service v. City of Rancho Mirage*, 745 F.2d 1270 (9th Cir. 1984); *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005 (9th Cir. 1983).

The allegations of the Second Amended Complaint concerning violations of state law in the processing of the approval of The Koll Company building do not deprive the municipal defendants of immunity. *Llewellyn v. Crothers*, 1985-2 Trade Cases (CCH) ¶ 66,685 (9th Cir., July 8, 1985). In that case, the adoption of a *de facto* fee schedule for licensed chiropractors was immune from antitrust prosecution under the doctrine of "state action immunity" even though the schedule was adopted in a procedurally improper manner. The court said:

A state's antitrust immunity springs from an essential principal of federalism, the necessity to respect a sovereign capacity in the several states. (Citation omitted). Given this purpose, it follows that actions otherwise immune should not forfeit that protection merely because the state's attempted exercise of its power is imperfect in execution under its own law.

Nor does the assertion in the Second Amended Complaint (¶ 27) that defendant The Koll Company hired key city officials and made direct payments and other valuable considerations and inducements to city and agency personnel render the state action immunity inapplicable to this case. There is no assertion on the fact of the Second Amended Complaint, nor was any made in the course of oral argument as to the nature of the payments in question. If plaintiffs intend to allege and impropriety in the nature of bribery or some like activity, such grave allegations are in this court's opinion subject to the provisions of Fed. R. Civ. P. 9(b), requiring that both the nature of the acts and the individu-

als involved be alleged with specificity. In the course of oral argument and in support of their motion for the imposition of Rule 11 sanctions, defendants suggest that discovery in this case reveals that the asserted payment were in the form of campaign contributions. If that is so, then the immunity is undisturbed. *Metro Cable Co. v. CATV of Rockford, Inc.*, 516 F.2d 220 (7th Cir. 1975). The court is mindful that in a Rule 12(b)(6) motion, the court may not go beyond the four corners of the complaint in evaluating whether a claim has been stated upon which relief may be granted. In this instance, the decision is entirely based upon the nature of the conclusory and imprecise allegations of ¶ 27 rather than upon the suggestions as to the nature of the payments which were made at oral argument.

The case of *Westborough Mall v. City of Cape Girardeau, Mo.*, 693 F.2d 733 (8th Cir. 1982), is not helpful to plaintiff on the issue of state action immunity because it deals with zoning and not with a clearly articulated policy expressed by a state legislature such as the policy in issue here. The legislature in the instant case specifically enumerated, in the sections of the Health and Safety Code which have been previously referred to, actions contemplated and proper for the purpose of furthering the purpose of the statutory scheme. Furthermore, the idea suggested in *Westborough Mall*, that state action immunity may not avail if public officials act out bad motives was laid to rest by the Ninth Circuit court in *Llewellyn, supra*, where it was held that the availability of state action immunity depends not on such subjective motivations, but rather on the satisfaction of objective standards.

In sum, plaintiffs' allegations as pleaded do not state a claim of antitrust violations against defendant City or against defendant Redevelopment Agency.

Plaintiffs argue with emphasis that the facts as alleged in the Second Amended Complaint are markedly distinguishable from the facts of the authorities to which I have already referred. It is their claim that the allegation of conspiracy purported to exist between the city council of the city of San Jose, the Redevelopment Agency of the city of San Jose and The Koll Company remove this case from the purview of the authorities because none

of those involve a situation where a governmental entity, purporting to act within the limits of clearly articulated state policy, has undertaken to conspire with another for an unlawful and predatory purpose. As a threshold matter, under plaintiff's theory, it is apparent that the alleged co-conspirators must be the named defendants, i.e., the defendant City of San Jose, the defendant Redevelopment Agency and the defendant The Koll Company. Under this theory, at a minimum, plaintiffs should have, and have not, specifically alleged the authority of those who purported to do the acts which plaintiffs say render the defendant City and the defendant Agency co-conspirators.

Plaintiffs argue that they have been curtailed in discovery and by inference are thereby unable to allege facts more specifically than they have done in their Second Amended Complaint. My review of the file in this matter reveals a stipulated order staying discovery until after May 20, 1985. An earlier order made by United States Magistrate Wayne D. Brazil, and filed on April 11, 1985, stayed discovery until after I ruled on defendant's motions for judgment on the pleadings with respect to plaintiff's Amended Complaint. By stipulation, those motions were withdrawn. (See Stipulated Order Re Discovery in briefing schedule filed April 25, 1985.)

In support of the distinction which they seek to draw, the plaintiffs cite the following language in *Parker v. Brown*, 317 U.S. 341, 351 (1942):

True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful, (citation omitted) and we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, (citation omitted).

And to language contained in *Scott v. City of Sioux City, Iowa*, 736 F.2d 1207, 1214, 1215 (8th Cir. 1984):

A city council could conceivably violate the antitrust laws by entering into an agreement with a private developer to restrain trade.

The *Scott* court cited *Westborough Mall, supra*, (dealing with the employment of means other than legitimate lobbying in the context of the *Noerr-Pennington* doctrine); *Mason City Center Assoc. v. City of Mason City*, 671 F.2d 1146 (8th Cir. 1982), (a case involving zoning and not a comprehensive regulatory system clearly articulated and affirmatively expressed by the state legislature); *Whitworth v. Perkins*, 559 F.2d 378 (5th Cir. 1977), *vacated on other grounds*, 435 U.S. 992. None of these cases provide definitive authority for the position which plaintiffs desire this court to take in ruling on this motion. At most, they say that under certain factual conditions, entities in the position of these defendants might incur antitrust liability which would not be sheltered under any immunity doctrine. In the instant case, observant of the doctrine of *Conley v. Gibson*, 355 U.S. 41 (1957), this court has no difficulty in concluding that as pleaded, plaintiffs could prove no set of facts in support of their claim which would entitle them to antitrust relief against defendants. Plaintiffs' opportunity to do so has been treble. Further leave to amend upon this record is unjustified and must be denied.

Furthermore, if states may replace competition with regulation, by clearly articulated state policy, which is in furtherance of a sovereign aim, it is difficult to see how conduct which, if not immunized, would be predatory, and would constitute one of the elements for relief under the Sherman Act, can become a distinguishing element in overcoming the very immunity which was designed to protect that conduct. Here, the purport of plaintiffs pleadings in their Second Amended Complaint indicate governmental action pursuant to articulated state policy and do not clearly plead unauthorized action on the part of state employees to further a conspiracy with private individuals. (See *Omni Outdoor Advertising v. Columbia Outdoor*, 506 F. Supp. 1444 (D.C.S.C. 1983); *Schiessle v. Stephens*, 525 F. Supp. 763 (N.D. Ill. 1981). At oral argument, plaintiffs sought to distinguish the applicability of state urban redevelopment procedures on the basis that at the time of the events described in the Second Amended Complaint, the area in question had either ceased to be or was not blighted. Surely at some point, in every instance of redevelopment, the authorized activities of the agencies responsible for redevelopment cure substantial portions of the blight which justi-

fied agency action in the first place. No authority is cited which would tend to support the notion that somehow the applicable statutes become inapplicable when those implementing them have nearly completed the task to which they set themselves. The case of *Regus v. City of Baldwin Park*, 70 Cal. App. 3d 968 (1977), is not apt because there the court found insufficient evidence of blight *in the first instance*. In the instant case, the City of San Jose passed for publication on June 24, 1975, Ordinance No. 17778, wherein the City Council made an adequate finding based upon sufficient evidence that the area in issue here was in fact blighted. This court may take judicial notice of such ordinances under Rule 201, Fed. R. Evid. *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977); *Oceanic California, Inc. v. City of San Jose*, 497 F. Supp. 962, 967 n.8 (N.D. Cal. 1980). In the instant case, there are insufficient well-pleaded allegations to successfully charge that defendants acted in a fashion which was not reflective of state policy, but rather was inconsistent with the antitrust laws. Cf. *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978).

Defendant The Koll Company contends that assuming the truth of the well-pleaded allegations of plaintiffs, it is immune from antitrust attack under the *Noerr-Pennington* doctrine, which is based upon that defendant's First Amendment right to petition the government. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). This defendant relies upon *Llewellyn, supra*, contending that the conspiracy allegations as contained in the Second Amended Complaint are insufficient because of their vague and conclusory terms. Defendant The Koll Company asserts that the sham exception to the *Noerr-Pennington* doctrine has no application here because allegations that a defendant utilized its petitioning activity not for the purpose of influencing government action, but rather for the purpose of barring plaintiffs from access to governmental bodies and tribunals, may not be pleaded in vague or conclusory terms lest the exercise of the right to petition be chilled by the threat of antitrust suits. *Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of Culinary Workers*, 542 F.2d 1076 (9th Cir. 1976). An examination of the Second Amended Complaint



reveals that plaintiffs do not allege that defendant Koll's petitioning activity barred their access, but rather, that the City's promises deterred their utilization of such access. At best, they allege that certain promises made by the City were a sham. They do not allege that Koll's petitioning activity was a sham. Therefore, the sham exception to the *Noerr-Pennington* doctrine has no applicability here, and on its face, the Second Amended Complaint fails to state a claim for antitrust violation against defendant The Koll Company. The case of *Westborough Mall, supra*, held that the *Noerr-Pennington* doctrine was not intended to protect those who employ illegal means to influence their representatives in government, and that actions beyond traditional political activity are not protected by that exemption. However, in the instant case, nothing is pleaded, beyond conclusory materials, to properly allege unlawful conduct on the part of The Koll Company or activity transcending legitimate lobbying.

## II

### 42 U.S.C. § 1983

Count Two of the Second Amended Complaint alleges that defendants, through their actions, deprived plaintiffs of due process and equal protection. Defendants move to dismiss on the grounds that § 1983 claims are restricted to deprivations of rights secured by federal law and that plaintiffs have alleged no such federal rights deprivation.

Plaintiffs characterize their violated rights as "the economically viable use of their property and the fulfillment of their investment-backed expectations" and their rights as secured by California's community redevelopment law. Plaintiffs, relying upon *Scott v. City of Sioux City, Iowa*, 736 F.2d 1207 (8th Cir. 1984), assert that they have pled "a legitimate claim of entitlement" to parking based upon their mutual understanding with City defendants. They claim therefore that they have an entitlement which is constitutionally protected, rather than a mere expectation under state law which is not constitutionally protected. *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sinderman*, 408 U.S. 593 (1972). In asserting their legitimate claim of entitlement to the

parking accommodations in question, plaintiffs rely upon the "express contract or mutual understanding with the defendants," as expressed in *Scott, supra*. However, as pointed out by defendants, the purported assurances are pleaded in conclusory fashion and nowhere in the Second Amended Complaint do any allegations of the identity of the persons making such assurances appear, not what their legal authority, if any, was to make them.

Such allegations seem to the court to be minimally necessary in order to make any determination with respect to such an express contract or mutual understanding. Absent such a showing, a loss of business or commercial expectations are not cognizable under § 1983, unless it is alleged that there exists no rational basis for the undertaking of the challenged governmental action. *Construction Industry Assoc. of Sonoma County v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975); *Contra Costa Theatre, Inc. v. City of Concord*, 511 F. Supp. 87 (N.D. Cal. 1980) *aff'd*, 686 F.2d 798 *cert. denied* 103 S. Ct. 1777 (1983).

Plaintiffs have not alleged, in their attempt to state their claim based upon denial of the equal protection of the laws, that they have been denied rights or privileges granted to others. An allegation of unequal treatment of persons similarly situated is a necessary allegation. *Mlikotin v. City of Los Angeles*, 643 F.2d 652 (9th Cir. 1981). The allegations of paragraphs 20, 29, 32, 36 and 66 of the Second Amended Complaint are to the opposite effect.

The Second Amended Complaint does not state a claim upon which relief may be granted under § 1983 for violation of plaintiffs' right to the equal protection of the laws or to substantive or procedural due process.

Therefore, the Second Cause of Action is DISMISSED WITHOUT LEAVE TO AMEND.

### III

#### PENDENT CLAIMS

Inasmuch as the federal claims asserted in the Second Amended Complaint are DISMISSED WITHOUT LEAVE TO

AMEND, plaintiffs shall show cause within FIFTEEN (15) DAYS from the date of this order why the pendent claims asserted in Counts III and IV should not be dismissed without prejudice under this court's discretion as defined in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), to be reasserted in state court.

IV

RULE 11 SANCTIONS

All applications for Rule 11 sanctions are DENIED.

Dated: 1-24-86.

/s/ WILLIAM A. INGRAM  
William A. Ingram  
United States District Judge



Appendix C

Herbert F. Kaiser, Esq.  
Attorney at Law  
Suite 1250—Alcoa Building  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

United States District Court  
Northern District of California

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a municipal corporation and subdivision of the State of  
California; Frank Taylor, the Koll Company, a California  
Corporation,  
Defendants.

Second Amended Complaint for Damages and Injunctive Relief  
for Conspiracy to Violate the Antitrust Laws, Federal Civil  
Rights Act and Constitution of the United States; Promissory  
Reliance and Inverse Condemnation [Filed July 25, 1985]

[Jury Trial Demanded]  
Clerk's Record Docket No. 73

Plaintiffs David A. Boone and Stephen P. Fox, individually and  
as general partners of DSC-3 Group, a California limited partner-  
ship, David Goglio and Donald Goglio, individually and as gen-  
eral partners of Three G's, a California limited partnership,  
demanding a trial by jury, complain and allege as follows:

COUNT ONE

CONSPIRACY TO VIOLATE ANTITRUST LAWS

I

JURISDICTION AND VENUE

1. This action arises in part under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), § 4 of the Clayton Act (15 U.S.C. § 15) and the Civil Rights Act of 1971 (42 U.S.C. § 1983). It seeks injunctive relief and damages for injuries caused by defendants' actions in violation of those acts, and also in violation of California law.

2. This court has jurisdiction pursuant to the Sherman Act (15 U.S.C. § 4) and to the Clayton Act (15 U.S.C. § 15). It also has jurisdiction pursuant to 28 U.S.C. §§ 1331(a), 1343(3), 2201 and 2202. It also has jurisdiction by reason of the operation of the doctrine of pendant jurisdiction.

3. The unlawful conspiracy and acts, predatory conduct and violations of law which are described below have been, in part, conceived, carried out, and made effective within the Northern District of California, and each defendant transacts business in this district.

II

PARTIES

4. Plaintiffs David A. Boone ("Boone") and Stephen P. Fox ("Fox") are individual citizens of the State of California, and are general partners in DSC-3 Group, a California limited partnership, and in Market/Post, Ltd., a California limited partnership. Plaintiffs Dave Goglio and Donald Goglio (hereinafter collectively called "Goglio") are individual citizens of the State of California, and are general partners in Three G's, a California limited partnership. Boone and Fox and the three abovementioned limited partnerships are engaged in the business of developing office buildings and renting office space in San Jose, California. Plaintiffs were induced by defendants Redevelopment Agency and City officials to build the largest office building in

San Jose (three times the size plaintiffs originally intended) invest \$56 million in a redevelopment project in furtherance of Redevelopment Plan and goals with the inducement and promise of protection in the form of City-provided parking facilities.

5. Defendants are:

(a) The Redevelopment Agency of the City of San Jose ("Agency") is a public agency organized and existing under a resolution of the City Council of San Jose;

(b) City of San Jose ("City") is a municipal corporation and subdivision of the State of California;

(c) Frank Taylor ("Taylor") was at all relevant times executive director of the Redevelopment Agency;

(d) The Koll Company, a California corporation ("Koll"), with its principal place of business in Newport Beach, California. Said Defendant is a private developer engaged in the business of developing office buildings and renting office space. Said defendant conspired with defendant City and Agency officials, Frank Taylor, and co-conspirators, combining their economic and political power to interfere with plaintiffs' business, eliminate plaintiffs as a competitor and totally destroyed the economically viable use of plaintiffs' investment in the Redevelopment project described herein so that defendant Koll could acquire plaintiffs' assets by said predatory conduct.

6. Defendants have acted as agents of one another, in concert with one another and as co-conspirators in the violations of the law which are hereinafter alleged.

### III

#### AGENTS AND CO-CONSPIRATORS

7. Certain public officials, corporations, persons, partnerships, businesses, entities including equity partners of defendant Koll, professional appraisers, planning and design engineers and experts not named as defendants knowingly aided and abetted, made statements, destroyed public records and tapes and participated in, conspired with and performed acts in furtherance of the

violations of the law alleged herein. Plaintiffs are presently unaware of the identity of all the co-conspirators who participated in the violations of the law hereinafter alleged. When known, plaintiff will seek leave of the Court to amend this Complaint.

#### IV

#### THE MARKET

8. Interstate commerce is herein involved. This action concerns the construction and operation of office buildings and parking structures using materials which are in the flow of the interstate commerce. The office space is in part for use by persons who conduct interstate commerce, is financed through the means of interstate commerce, and may compete for tenants in interstate commerce.

9. Defendant Koll conspired and acted with defendants City and Redevelopment Agency officials, Frank Taylor, and the unnamed co-conspirators to engage in an unlawful combination and *conspiracy to violate the antitrust laws of the United States* by restraining competition and monopolizing interstate trade and commerce in the market for office space and parking in Central San Jose and the Pueblo Uno Redevelopment Project area. The purpose and intent of this unlawful conspiracy was to prevent and eliminate plaintiffs as competitors of Koll in that and other markets, and totally destroy the economically viable use of plaintiffs' property in order to predatorily acquire plaintiffs' assets at distressed or bankrupt values.

#### V

#### SUMMARY OF CHALLENGED ACTIVITY

10. Defendant Koll conspired with the City and Agency defendants, including Frank Taylor, to get their vigorous involvement in orchestrating and carrying out aspects of the conspiracy among other things Taylor, City and Agency defendants induced plaintiffs to build the largest office building in San Jose (three times larger than they originally intended), and invest \$56 million in the redevelopment project by falsely promising plaintiffs the

protection of the Pueblo Uno Redevelopment Plan and parking ordinances wherein the City and Agency were obligated to provide for the increased parking needs of office building developers such as plaintiffs in its Pueblo Uno Project Area. Defendants knew that plaintiffs would seek construction financing and later interim and permanent financing based on the City's plan and promise to provide parking. Such parking is necessary to rent office space to provide income to service debt and operating expenses. The final predatory act planned by Koll and the other defendants was to combine to block plaintiffs from acquiring adequate parking without any rational relational relationship to any permissible interest of the city or agency after plaintiffs had built the building without providing adequate parking themselves, because of the City and Agency promises. Defendants knew that plaintiffs would not be able to compete with Koll in the market for renting office space without the promised parking, and plaintiffs would not be able to get take-out interim or permanent financing because of the blocked parking. Thus plaintiffs and other competitors would either have to sell to Koll (who controlled all the parking in the project area) at a distressed price or Koll could acquire plaintiffs' property in foreclosure by the construction lender after plaintiffs' other financing was denied.

11. Pursuant to the conspiracy and offenses charged herein, and in furtherance of their intention to accomplish their purposes as alleged herein, defendants and their named co-conspirators did numerous predatory acts that will be described later in more detail. Such predatory acts included, but were not limited to:

(a.) Defendant Koll developed close relationships with City and Agency officials, made ex parte secret contact with those officials to accomplish their said unlawful purpose to eliminate plaintiffs as a competitor;

(b.) Defendant Koll conspired with defendant City and Agency officials to receive preferential treatment to accomplish the said purpose of the conspiracy;

(c.) Such persons combined their economic and political power to stop plaintiffs from getting the promised adequate

parking by secret contact and agreements with City and Agency officials;

(d.) Koll under pretext of soliciting plaintiffs' construction business, monitored plaintiffs' development and financing activities in order to apply the ultimate knock-out punch of blocking plaintiffs' parking at a time when it was too late for plaintiffs to change their plans for building adequate parking and thereby obtain interim or permanent financing;

(e.) Koll timed the solicitation of plaintiffs' construction business at the same time Koll had secretly negotiated with the City to block plaintiffs' and all other competitors from City parking facilities so they could not compete with Koll. Koll agents did not tell plaintiffs of these secret agreements when they solicited plaintiffs' business and were told that plaintiffs were relying on the promised City parking facilities in order to rent space and obtain financing;

(f.) Defendants and co-conspirators blocked plaintiffs' legitimate access to the administrative and legislative decision making process and such persons deceived plaintiffs by the continued promises of providing parking in City facilities;

(g.) Defendants and co-conspirators blocked plaintiffs' access to judicial review of City's legislative process by deceitfully inducing plaintiffs to rely on the City's and Agency's promises of parking. This continued until after the expiration of the time limits of the means by which plaintiff could seek ordinary judicial review of plaintiffs' opposition to, among other things, sham, arbitrary and discriminatory passage of ordinances, amended redevelopment plans and condemnation proceeding;

(h.) Defendant City and Agency officials and Taylor conspired with Koll in making false property appraisals, financial analysis, and misrepresentations to promote Koll's conspiracy to take over and monopolize the market and to drive plaintiffs out of business. In further support of the conspiracy, defendants and co-conspirators acted to transfer land to Koll at less than fair-market re-use value in violation of § 33433 Health & Safety Code Community Redevelop-



ment Law; and to mislead the legislative body to induce it to adopt and pass the Koll development agreement and institute sham condemnation proceedings;

(i.) Defendant City and Agency officials made false reports and misrepresentations to the legislative body concerning the environmental and traffic impact of the Koll plan in order to prevent all competitors, including plaintiffs, from access to public parking facilities in the Pueblo Uno property area. Included in such misrepresentations was the claim specifically misrepresentating to the legislative body that the Koll scheme and plan was authorized by the "Downtown San Jose 1995" environmental impact report. That claim was untrue and the Koll scheme was in fact in violation of the California Environmental Quality Act § 21166 Public Resources Code and California Community Redevelopment Law § 56035, 56040 Health and Safety Code;

(j.) As a result of the conspiracy and its achievements, Koll, and its co-conspirators have already excluded one competitor in the project area and Koll has taken over its building;

(k.) Koll, because of the conspiracy, was able to know ledgeably tell prospective tenants that plaintiffs would not be able to obtain parking;

(l.) Koll approached plaintiff through a straw entity owned by Koll to purchase plaintiffs' building at a distressed price because as a result of the conspiracy plaintiffs could not provide parking and the value of plaintiffs' building was greatly diminished;

(m.) Defendants and co-conspirators destroyed public records, minutes and tapes of the Planning Department and Pueblo Uno community meetings which support plaintiffs' claims herein, both before and after this cause came within the jurisdiction of this Court.

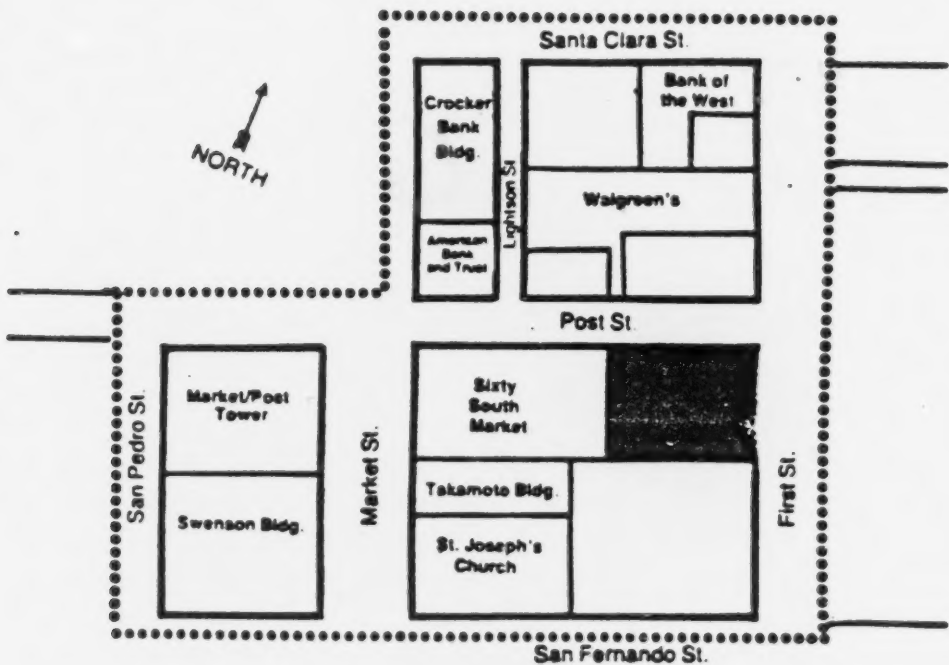
## VI

## BACKGROUND

THE PUEBLO UNO REDEVELOPMENT PLANS AND  
PROJECT AREA

12. The Pueblo Uno Redevelopment Project was initiated on July 8, 1975 as a project for the *non-assisted redevelopment* in the core area of San Jose under California Community Redevelopment Law. The concept and objective of the Plan was to redevelop the area by attracting private investment. The Redevelopment was to proceed through voluntary cooperation of property owners "without condemnation" with the City providing the needed infrastructure, *especially parking facilities*, through tax increment financing from "all taxes levied upon taxable property within the Project area". The Plan provided that a committee of representatives selected by the property owners in the project area would participate in the formation of plans for development and make recommendations to the City Council before any public hearings were conducted relative to changes in the Plan. Property owners were given rights to participate in the development of the project area, and in a later amendment to the Plan, they were given preference to develop. The Plan was to be in effect for twenty years, to 1995.

13. The Project Area, is pictorially described in Diagram 1, below:



14. The Plan required Planning Department review of all development in the Project Area. Any changes in the Plan and/or land use would require revisions of the Environmental Impact Report and require compliance with State environmental review statutes.

15. A critical provision and policy of the plan was that the City would provide adequate land and facilities for parking in the project area to be used by all who invested in the project area, and would otherwise insure that traffic congestion would be minimized. As an incentive to private development the Project Area was included in Parking District No. 1. Within that district, funds collected from parking revenues generated by City-owned parking lots and garages, tax increments from property owners within the project area, and assessments if needed, were to be used to provide parking facilities, thus enabling developers to build without incurring the expense of providing parking facilities.

16. Thus developers within the Project Area would not need dedicated parking in order to obtain construction and permanent financing for their development because they were assured and could assure lenders that the City would provide parking within the project area.

17. By intent and design, Defendants Redevelopment Agency and City of San Jose restricted the construction of on-site parking facilities for the office building. As stated by those defendants, the purpose of those restrictions was to obtain parking revenues from the City-owned parking lot at Post and Market Streets which was, according to the Plan, set aside for the use of the property owners in the area and was ultimately to be developed as a multi-story parking garage for use of *all* developers and business in the Project Area.

18. On November 17, 1978, the City Council of San Jose acting as the Redevelopment Agency, approved the Pueblo Uno Master Plan which provided for the construction of a multi-story parking structure at Market and Post Streets to encourage private development. The budget for the Project Area provided for this 600 car multi-story garage using funds collected from tax increments from property taxes collected within the project area and revenues from City owned parking facilities.

19. In mid-1981 the Pueblo Uno 1982-1983 budget was published. It provided for funds for the construction of a 600 space garage at Post and Market Streets for use by all Project Area buildings and businesses, replacing the City surface parking lot. The 1983 environmental impact report for Downtown San Jose's, plans through 1995 provided, as a key aspect of the traffic analysis, for a "city garage" at Market and Post Streets, providing 600 necessary parking spaces for the area.

20. Up through 1981 the Plan had successfully attracted private investment and development and increased property values. The Crocker Bank Building, (100,000 sq. ft.) the Swenson Building, (145,000 sq. ft.), the Takamoto Building rehabilitation, (40,000 sq. ft.), and the American Bank and Trust Building, (42,000 sq. ft.), had been or were in the process of being developed. These added approximately 327,000 square feet of

office space to the area, totalling 50 million dollars of private investment (not including plaintiffs investment of \$56,000,000 in their 315,000 sq. ft. building) without the expenditure of any City funds except for customary street and landscape improvements. However the total amount of parking spaces developed by these building owners was less than 200 spaces because the City and Redevelopment Agency requested that the developer rely on the 600 car garage to be built by the City at Market and Post Streets. Thus, by 1981 there was a critical shortage of parking in the Project Area. The City's own parking reports and analysis suggested at least two spaces per thousand square feet of rental office space were necessary to adequately provide for tenants and visitors of the office building.

## VII

### CHRONOLOGY OF EVENTS AND OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

21. Each of the acts of defendants and co-conspirators herein described, as well as other acts and practices not presently known to plaintiffs, was done in furtherance of the offenses charged and in furtherance of the challenged actively described in the preceding paragraphs and was done with the primary purpose and intent of unreasonably restraining and monopolizing the trade and commerce described herein. It was the joint and several intent of the defendants and co-conspirators to, and their acts have had the purpose and effect of, accomplishing their conspiracy.

22. In April of 1981, plaintiffs Boone and Fox became interested in developing space in the project area in what was an emerging core business district developed by private investment without condemnation or the expenditure of City funds. They purchased options on two lots on Market Street immediately across from the City parking lot which had been announced in the Plan and budget would be developed into a 600 car garage.

23. They submitted plans to the City and Redevelopment Agency to build two small office buildings on the lots, totalling 96,000 square feet of rentable office space. Up to that time, Boone and Fox's total investment was \$7,000.

24. In the meantime, defendant Koll also became interested in the Pueblo Uno Project Area because of the success of private development that had occurred since the adoption of the Plan in 1975. Koll knew that the Redevelopment Agency had developed a fund of monies from tax increments obtained from property owners in the area and other areas, as well as funds from parking revenues.

25. Sometimes prior to April 1981, the exact date being unknown to plaintiffs, defendant Koll developed their scheme to secure for itself a preeminent position in the market for office space and parking in Central San Jose and the Project Area by restraining and eliminating fair competition and destroying potential and actual competitors of Koll.

26. Koll was aware of the parking space limitation and crisis caused by the development that had already occurred in the Project Area and Koll knew that parking is a critical element in attracting tenants, so Koll set out to conspire with City and Agency officials in order to accomplish their plan to eliminate competition by blocking competitors or potential competitors from access to City parking facilities in spite of the reliance on previous City promises, the Plan, and the Parking District I ordinance, while continuing to induce such reliance.

27. In furtherance of their scheme, Koll created special relationships with City officials, hired key City officials, and made direct payments and other valuable considerations and inducements to City and Agency personnel.

28. In furtherance of the conspiracy in the spring of 1981 Koll met with City and Agency defendants and developed a scheme wherein the Agency would send out letters soliciting bids from developers regarding the Pueblo Uno Project area. However, no project owner in the project area was invited to bid. In fact, Koll gave the Agency officials the names of developers who they knew were not interested in developing the area so that when the Agency sent invitations to these firms they would not bid. Koll, who also received an invitation to bid, thus was the only firm to submit a plan and therefore would be accepted. Koll also conspired with these Agency officials to keep it advised as to any



other developers that contacted the Agency regarding development in the area.

29. In furtherance of the conspiracy, in April and May of 1981 on reviewing plaintiffs' plans, agency officials, insisted that plaintiffs Boone and Fox change their plans, purchase additional land, and construct a much larger building, the largest building in San Jose, (315,000 sq. ft.), more than three times bigger than the one which they originally had planned. Knowing of the critical shortage of parking in the area, plaintiffs sought and obtained multiple promises, assurances and reassurances that City would provide parking in the area. The Redevelopment Agency officials and staff falsely represented that this would be the justification that City needed in order to advance the time for the building of the 600-car parking garage. They stated that that garage would then provide the necessary parking for both the tenants of, and the visitors to, plaintiffs' building. As they had with other developers, they insisted that plaintiffs not plan adequate parking on site because the use of City parking facilities would provide additional revenues to the City and ultimately provide more parking facilities for everyone's benefit.

30. In furtherance of the conspiracy, Agency officials repeatedly but falsely promised plaintiffs that City would construct a parking structure at the Market/Post site owned by City. At various times as plaintiffs' plans and financing proceeded, plaintiffs sought reassurance that the promised parking would be provided. Plaintiffs told Agency and City officials that their construction financing depended on city parking facilities across the street at Market and Post Streets. Plaintiffs needed to borrow approximately \$33,000,000 to build their building with only 150 parking spaces in a two-level subterranean garage. Their plans required that tenants could lease monthly parking in the City garage at Market and Post. Plaintiffs relied on the Pueblo Uno Plan for a 600-car garage, and Parking District I Ordinance. Until mid-1983 and their actual commencement of construction, plaintiffs could have backed out with minimal loss and prior to that time sought, obtained, and relied upon repeated assurances of parking. At each of these times, defendants City and Agency

officials assured plaintiffs that the parking which they needed would be provided.

31. Relying on those promises, Boone and Fox arranged a partnership with plaintiff Goglio, developed plans, sought investors and otherwise acted to prepare to build the requested building. Although Agency and City officials intended that plaintiffs proceed, in fact their ultimate goal was to benefit Koll by trapping plaintiffs in an uneconomic building because defendants knew that plaintiffs would not be provided the promised parking.

32. In furtherance of the conspiracy, a secret agreement was executed on April 8, 1982 between defendants City and Agency with Koll which contained a covenant not to contact other City agencies. Thus, Koll was able to obtain approval of its project without scrutiny of its environmental and traffic impact by the Planning Department, despite the fact that such scrutiny continued to be exercised on all other such developments, including that of plaintiffs. Because defendants City and Agency refrained from giving the statutorily required notice of a public hearing regarding the environmental review of the Koll building, Koll was enabled to build its building on the only available space for public parking facility in the area. Thus, defendants conspired to, and did, deprive other nearby buildings of the parking spaces which defendant City had promised to their owners. This was accomplished without the environmental review process which California law requires for the purpose, among others, of addressing adverse traffic impact. By such action, the California Community Redevelopment Law, § 33000 *et seq.*, § 56035, § 56040 Health and Safety Code, and the California Environmental Quality Act § 21000 *et seq.*, § 21166 Public Resources Code were violated.

33. While Koll proceeded in secret, plaintiffs proceeded publicly. Thus, concurrent with the execution of the above-mentioned secret agreement with Koll in April, 1982, and after full review and public hearings regarding plaintiffs' building plans, the City Planning Department approved those plans *with parking to be provided in a city-built garage*. The Planning Department issued a Negative Declaration finding that plaintiffs' development with the promised parking would have to adverse environmental or traffic impact.

34. On June 2, 1982, the Redevelopment Downtown Coordinator submitted a report to the City Council which provided for the development of the city-owned parking garage and which further provided for joint development and/or condominium ownership with private developers of additional parking space in the core area. That report contemplated that private developers would either participate in the cost of the additional parking or make an "in-lieu" payment. In furtherance of the conspiracy, City and Agency officials emphasized to Boone and Fox that the report of June 2, 1982 assured the commitment to provide parking to them.

35. While Koll's plans continued in secret, it contacted Boone and Fox in June of 1982, allegedly to consider contracting to construct plaintiffs' proposed office building, but in reality to discover and monitor the details of a competitor's plans. In good faith, plaintiffs disclosed all of their plans, including financing information. They also disclosed to Koll their complete reliance upon City's promised provision of a parking garage at Market and Post Streets, including Plaintiffs' reliance for financing purposes. Koll's agents did not disclose to plaintiffs that Koll had already negotiated with the City and Agency officials to exclusively use the property, and to block plaintiffs from all City parking facilities. With the use of plaintiffs' disclosures, Koll and its co-conspirators were enabled to lead plaintiffs into building their enlarged building, and then to undermine them so that they would ultimately be forced to sell out to Koll.

36. On October 8, 1982, at the Pueblo Uno Property Owners Committee meeting, Koll presented its proposed two-phase project. Phase I was to be a 190,000 square-foot office building on the parking lot at Market and Post Streets, with a parking structure behind. Phase II was a 250,000 square-foot office building at the corner of San Fernando and First Streets, with an addition to the above-mentioned garage. That garage was planned to service Koll's two building *only*. The Committee voiced concern about the parking crisis that this proposed development would exacerbate, and referred to the 600-car garage which City had promised to the developers. In furtherance of the conspiracy Agency officials replied that the City would take care of the developers' needs, especially those of Boone and Fox, through

additions to the Market Street garage which was one-and-one-half blocks away from the Project Area.

37. Boone and Fox wanted to have a voice in the recommendations concerning Koll's proposal and the use of the land which had been promised for parking. However, in furtherance of the conspiracy, defendant Frank Taylor, of the Redevelopment Agency, sent a letter to the Pueblo Uno Committee wherein he falsely stated that it would be a violation of state law prohibitions against conflict of interest for either Boone or Fox to become members of the Committee. On December 17, 1982, the Pueblo Uno Committee met again, at which time the Deputy City Attorney and various representatives of the Redevelopment Agency falsely warned that if Boone and Fox participated in the Committee's decisions concerning Koll's project, they would be violating state law. William Benson of Koll also indicated to Committee members his resentment of Boone and Fox's participation in the recommendation process. Minutes and tapes of these public meetings have been altered and/or completely destroyed by the defendants and unnamed co-conspirators in furtherance of the conspiracy.

38. The accommodation of Koll's plan necessitated a substantial change in the Project Area Redevelopment Plan and in the environmental impact report for "Downtown San Jose 1995". Instead of there being essentially private development without condemnation, and with City providing infra-structure, especially parking facilities, City and Agency were to provide Koll with the building site which had been designated for parking in the latest Environmental Impact Report. The scheme and *sham*-amended Redevelopment Plan and sham-condemnation proceedings provided for City's and Agency's transfer to Koll of city-owned land at an artificially low price, less than fair market re-use value, on remarkable terms, i.e., no payment of either principal or interest by Koll until 1995, plus City's condemnation of other land which Koll desired. Other developers in the Project Area had requested the right to develop the same property with private funds but the City and Agency refused and thus violated the California Community Redevelopment Law § 33352 Health and Safety Code which provides in part that if the public improvement can be

accomplished by private enterprise, no expenditure of public funds or condemnation is authorized.

39. In furtherance of the conspiracy in late December of 1982 and early January of 1983, in order to convince plaintiffs not to protest Koll's development, City and Agency officials again assured Boone, Fox and Goglio that they would be provided with parking in the Market Street Garage as an alternative to the Market/Post area. Koll's representatives who had been dealing with Boone and Fox for the construction of the latter's building had also assured Boone and Fox that the alternative, the Market Street garage, was viable and would service the parking needs of the tenants and visitors of Boone and Fox's building although it was one-and-one-half blocks away. City and Agency officials informed Boone and Fox again of the joint venture or condominium concept that was announced by the City and the Parking Advisory Committee on June 2, 1982. They claimed the concept was legal, would enhance Boone and Fox's development, and would allow Boone and Fox to contribute to the construction of the additional levels to the Market Street garage, one of which would then be designated as a dedicated parking level providing 300 spaces for Boone and Fox's building.

40. From February to May 1983, Boone and Fox obtained construction financing in the sum of \$33 million based on the assurances that the City and Agency would provide parking (300 spaces) in the Market Street garage as a joint venture condominium concept as agreed to by Agency officials and supported by the City's documents and proposed ordinances.

41. On May 31, 1983, the construction loan was recorded by Boone and Fox from the Kuman Corporation, and Goglio's conditions were all met. On June 1, 1983, the Planning Commission and Building Department issued a building permit after full review of construction, financing, and parking provisions as discussed with City and Agency officials concerning the Market Street garage.

42. Boone and Fox broke ground and decided to build four levels of underground parking to provide 300 parking spaces on site with the use of 300 parking spaces in addition to the Market

Street garage, giving them a ratio of two parking spaces to every 1,000 square feet of office space. Boone and Fox once again applied to the Planning Commission for permission to build the two extra levels of underground parking totalling 4 levels in a subterranean garage to provide the on-site 300 parking spaces. Once again the circumstances of their parking needs and other related issues were reviewed by the Planning Commission.

43. In an attempt to continue to deceive plaintiffs to believe that a final agreement and understanding had been reached with the City and Agency, on August 5, 1983 City and Agency defendants wrote to Boone and Fox and submitted the cost for the Market Street garage addition.

44. On October 12, 1983, Koll presented their proposal to the Redevelopment Agency in writing, a proposal which, according to an Agency official, had been already secretly agreed to. The proposal provided for the purchase of the City parking lot and four privately owned parcels of land to be acquired by the City on First Street, totalling approximately 60,000 square feet of surface area. The price for all this was only \$4.5 million with final payment in the year 2000 and without payment of any principal or interest on said sum for ten years. The price considering the deferred payment for 10 years was less than the fair market re-use value for the project and in violation of § 33433 of the Health and Safety Code "community Redevelopment Law."

45. On October 14, 1983 at a meeting of the Pueblo Uno Property Owners Committee, Koll's proposal was presented by William Benson and reviewed by the Committee. After considerable discussion, it was stated by the Committee, including Boone and Fox, that Koll's proposal to build an office building was welcome, however Koll did not address the critical issue of adequate parking for the area, and the 840-car garage proposed would not be adequate for providing parking for all the new office buildings already constructed and buildings under construction in the Project Area. Koll and City and Agency officials knew of traffic analysis reports that had been made which indicated that the Koll proposal would cause an adverse traffic impact in the Project Area but these defendants did not advise the committee of said negative analysis.



46. On October 19, 1983, Boone and Fox's final application for a site development permit for their fourteen-story office building was approved with the inclusion of a four-level subterranean garage to provide 300 on-site parking spaces, with 300 more to be provided by the addition to the Market Street garage and paid for by Boone and Fox. In furtherance of the conspiracy up to November 15, 1983, City and Agency officials reassured Boone and Fox that they would get the addition in the Market Street garage upon pro rata payment, and that they should not object to Koll's proposal when it was placed before the City Council on November 15, 1983.

47. On November 15, 1983, a public hearing was held before the City Council to substantially amend the Plan and change land use to allow eminent domain and no longer require Planning Department design and review process for proposed development. No environmental impact or traffic impact studies or review of the proposals were ever submitted or considered by the City Council. The hearing was continued to December 6, 1983.

48. Also in November 1983, Boone and Fox had provided a copy of the appraisal report for their Market/Post Street Tower office building which was based in part on the 300 parking spaces on site in the subterranean garage and 300 parking spaces in the Market Street garage that Boone and Fox would pay for. The value of the building was \$56 million with the parking as an integral asset in the evaluation. City and Agency officials provided Boone and Fox with the 1983-1984 program budget which included the provision for the building of additional two levels on the Market Street garage by the City.

49. In furtherance of the conspiracy, on November 23, 1983, Boone and Fox were guaranteed by Agency officials that if they did not oppose the amended Plan to be adopted on December 6, their parking in the Market Street garage was assured, and all that was left to be determined was whether the construction would be concrete or steel and whether it would be two or three levels. Boone and Fox agreed to pay their pro rata share of the cost of the addition to the Market Street garage. Boone and Fox's payment would have assisted the City in obtaining bond financing for the balance of the entire cost.

50. On December 2, 1983, the Pueblo Uno Property Owners Committee met at a public hearing and announced their opposition to the proposed amended Redevelopment Plan and Koll's development proposal. The Committee sent its letter on December 3, 1983 to the City Council announcing their decision.

51. At the December 6, 1983 public hearing, the City Council sitting as the Redevelopment Agency, in part because of Koll's secret agreement and conspiracy, approved the proposed amended plan, "Resolution 2316", for the acquisition of four properties on First Street through eminent domain proceedings. This allowed Koll to go forward with Phase I of its planned 244,000 square-foot office building development with a garage of 800+ spaces to service its building. Members of the Pueblo Uno Property Owners Committee protested the proposed amendment and development.

52. In January 1984, the City published a report supporting the concept of a privately owned joint venture development of parking facilities with the City and private developers.

53. On January 2, 1984, a downtown San Jose parking analysis was submitted to the City, which stated the real parking needs in the area were at least four cars per 1,000. The reports indicated the urgent need for parking to be developed by the City in downtown San Jose. They also supported the joint venture, condominium ownership concept to be paid for by private developers such as envisioned in the Boone/Fox agreements with heads of the Redevelopment Agency and the parking coordinator. In furtherance of the conspiracy copies of the reports were provided by Agency officials to Boone and Fox as further evidence of the lawfulness and feasibility of the agreement.

54. The 1984-1985 Program and Budget for the City of San Jose provided for a parking solution with Boone and Fox's Market/Post Street Tower, and was presented in furtherance of the conspiracy as additional evidence by Agency officials to Boone and Fox to support all the promises Boone and Fox had relied on to develop their office building.

55. On March 21, 1984, the Downtown Parking Management Ordinance was passed by the City Council of San Jose to "provide parking off site within a reasonable walking distance

under a joint venture agreement". City and Agency officials in furtherance of the conspiracy once again used the passage of the Parking Management Ordinance as further support of the City's and Agency's commitment to the obligation negotiated with Boone and Fox and which Boone and Fox relied upon.

56. On March 29, 1984, the City Council/Redevelopment Agency approved an agreement with defendant Koll Company for the latter's development in the Pueblo Uno Project Area, and adopted a resolution and Ordinance 57333 at the request of Taylor in furtherance of the conspiracy certifying that the Koll development would not result in such substantial or potentially substantial changes in the environment as to require either revisions in the environmental impact report entitled "Downtown San Jose 1995" or a negative declaration. Although § 56035 of the Health and Safety Code required that notice of the March 29, 1984, hearing regarding environmental impact review be given to businesses and property owners in the area, in furtherance of the conspiracy, no such notice was given.

57. In furtherance of the conspiracy, Taylor represented to the Legislative body that the Koll project was considered in the "Downtown San Jose" 1995 Environmental Impact Report when in fact the report shows the Market/Post Street property given to Koll was to be a 600 car "city garage" for use by all property owners in the area, and was a critical element in solving the traffic and parking problems for the Core Area. In fact, the report was published in 1983 before the Koll project was approved and was intended to be the City plan until 1995. Therefore, Taylor misrepresented to the Council in order to avoid the issues of the substantial change and need for a new environmental review because of the adverse traffic impact caused by the Koll project taking away all the parking areas. Taylor and Koll also knew of a traffic analysis report, indicating the Koll project would have a substantial adverse traffic impact on the area and purposely did not disclose the information to the council.

58. In furtherance of the conspiracy defendant Koll and Taylor also misrepresented to the City legislative body that a larger garage could not be built at the Koll site when in fact more than an additional 600 spaces could be added to the garage to

provide for the other buildings, including plaintiffs', in the Project Area.

59. Also in furtherance of the conspiracy, false appraisals and financial analysis were presented to the legislative body by Taylor indicating that the re-use value of the land given to Koll was only \$1,700,000 in 1984 when in fact it was in excess of \$5,000,000 at the time. Furthermore, since Koll was not paying principal and interest for the land until 1995 when the real value of the land alone would be in far excess of \$15,000,000, the sale to Koll for \$4,500,000 on those terms was in violation of § 33433 Health and Safety Code, Community Redevelopment Law, because the fair market re-use value at the time was really \$5,000,000 and not \$1,700,000 as the false report and analysis represented.

60. The defendants, including Taylor and Koll represented to the legislative body that the profits of the Koll development were fair and would not exceed 18% when at the same time Koll was representing to potential equity partners that they could expect excessive monopolistic profits in excess of 50%.

61. In furtherance of the conspiracy, on April 4, 1984, City and Agency officials wrote to Boone telling him that the City decided to build three levels utilizing steel and that all the arrangements were complete for the construction of the Market Street addition for Boone's use and payment. On April 5, 1984, City and Agency officials provided Boone with a copy of the memorandum of the Parking Committee concerning the Market Street garage feasibility study and once again stated, "All systems are go."

62. In furtherance of the conspiracy, the City officials wrote to Boone assuring that the City was going forward with the completion of their commitment to Boone for the expansion of the Market Street garage, a portion of which was to be paid for by Boone. A report by Frank Taylor, was used in furtherance of this conspiracy, dated May 23, 1984, additional evidence that financial arrangements were being made by the City to complete the garage using Boone and Fox's contribution. This was approximately within 60 days after the adoption by the legislative body of the Koll development agreement on March 29, 1984, City Ordi-

nance § 57333. The defendants in furtherance of the conspiracy intended to deceive plaintiffs so that the 60 day period for objecting to the Koll development and Resolution 57333 would expire and thus block plaintiffs from judicial review.

63. In late July of 1984, Boone was told by a prospective tenant that the tenant was told by agents of Koll and equity partners of Koll that Boone did not have the promised parking at the Market Street garage and Koll was using this information to attract tenants because of the lack of parking in the Boone building.

64. Concerned upon receiving the information stated in paragraph 63, on August 7, 1984 Boone wrote to City officials to be assured that the Market Street garage addition promised to Boone was "still a go." Boone once again stated in the letter he was willing to pay one-third of the total cost of the addition to the garage. Boone again met with city officials and after they received the letter and in furtherance of the conspiracy they assured Boone that "everything looks good. We're just going to get it written up and it's done."

65. On August 30, 1984, the Redevelopment Agency met to address the issue of the 1984-1985 budget which included "negotiating parking solution for the Boone building." After the meeting, Agency officials in furtherance of the conspiracy continued to assure Boone that all systems were go, although no formal report was published from the meeting, nor have there been any minutes written up to the knowledge of plaintiffs.

66. As a result of the conspiracy in September, 1984, Koll bought the American Bank and Trust building located immediately opposite the Market/Post Streets property that Koll was to develop. The American Bank and Trust building did not have any parking when it was built and had always relied on the building of the Market/Post Street garage by the City. Koll had total control of all the parking facilities available in the Project Area, and no developer could compete in providing parking for tenants and visitors.

67. In November, 1984 Koll executives announced a "Blood Bath" in competition for downtown office space rental market.

Koll anticipated that by being first to complete, plaintiffs might succeed in contracting with desirable tenants based on the belief that there would be a parking arrangement utilizing the Market Street garage. To prevent plaintiffs' building from absorbing the limited supply of office building tenants, Koll demanded that the Agency renege. In response to that demand, the Agency then formally reneged on its promise to plaintiffs of this alternate parking. Such action was without any rational relationship to any permissible interest in the City.

68. In furtherance of the conspiracy, in January 1985, an agent for Grubb & Ellis approached Boone and indicated that he had an undisclosed principal who was willing to buy the Boone building at a distressed price for \$45 million. The price was more than \$11 million less than its fair market value because Boone could not provide adequate parking for his building, and he was having problems with the City. Although formal discovery has been denied plaintiffs in this action, informal discovery has revealed on April 26, 1985 that Donald Koll, the president of Koll, owns the maximum interest that an individual can own in Grubb & Ellis. Plaintiffs also were informed that the tapes of the hearings before the Planning Commission in April, 1982 when the commission addressed the parking need of plaintiffs and the traffic impact to the project area have been *erased*. Plaintiffs were informed on April 22 that minutes and tapes of Pueblo Uno Committee meetings were destroyed.

69. Plaintiffs building will be completed by August 15, 1985 and plaintiffs must pay off their construction loans of 33 million dollars within 6 months of the completion of the building. In order to meet these and other obligations, plaintiffs must obtain at least 300 additional parking spaces off site.

## VI

### VIOLATIONS ALLEGED

70. Beginning at a time unknown to plaintiffs, defendants, others acting for defendants, and their co-conspirators, have been and now are engaged in:



(a.) A combination agreement and conspiracy to unreasonably restrain the interstate commerce in the market for purchasing, owning, constructing, and/or developing and renting office space with parking facilities in San Jose in violation of Section 1 of the Sherman Act;

(b.) A combination and conspiracy to monopolize and destroy competition the interstate commerce in the market for purchasing, owning, constructing, and/or developing and renting office space with parking facilities in violation of Section 2 of the Sherman Act.

71. Each of the acts of defendants and co conspirators herein described, as well as other acts and practices not presently known to plaintiffs, was done in furtherance of the offenses charged in the preceding paragraph and was done with the *primary purpose and intent of unreasonably restraining the trade and commerce described herein*. It was the joint and several intent of the defendants and co-conspirators to, and their acts have had the purpose and effect of:

(a.) eliminating plaintiffs and others as competitors of Koll; and

(b.) totally destroying the economically viable use of plaintiffs' investment-backed expectation property right.

## VII

### INJURY TO PLAINTIFFS

72. As a direct and proximate result of the said conspiracy, plaintiffs are unable to fairly attract tenants and will be unable to operate economically in order to service their debt and operating expenses and compete in the market for office space in Central San Jose and Koll will ultimately own or control their property as well as that of other competitors in said market. Plaintiffs' damage is continuing but can be reasonably estimated and is expected to exceed \$56 million.

73. As a further direct and proximate result of said conspiracy plaintiffs will be unable to obtain take out, interim or permanent financing with which to repay their construction loan which is due

and payable within 6 months of completion of plaintiffs' building and thus face the total loss of the economically viable use of their investment backed expectation, and/or will be forced into bankruptcy as Koll has threatened.

74. Plaintiffs have no adequate remedy at law so that unless this Court immediately takes the following actions plaintiffs' property right of economically viable use of their investment-backed expectation and property will be totally destroyed.

(a.) That defendants, their successors, assigns, transferees, officers, directors, members, agents, and employees, and all persons acting or claiming to act on behalf thereof, be permanently enjoined and restrained from directly or indirectly continuing, maintaining, or renewing the unlawful combinations, conspiracies, and attempt to monopolize alleged herein, and from engaging in another combination or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

(b.) That defendants City and Agency be ordered to permit plaintiffs to joint venture a dedicated portion of the Market Street Garage paying a pro-rated share of the expense in accord with the policy and intent of the Parking Management Ordinance passed on March 21, 1984 and in the interim until the Market Street garage addition is completed, plaintiffs be allowed to lease from the City 300 parking spaces at prevailing rates either in the existing Market Street garage, and/or in the Koll project garage or in nearby City facilities and parking lots.

(c.) That defendant Koll, its agents, etc. be enjoined from continuing to build the garage on the property given to them until an analysis can be made of enlarging the garage to provide a fair and equitable pro-rata share of parking space to Koll, plaintiffs and all other building owners in the Pueblo Uno Project Area.

(d.) That a constructive trust be imposed on the garage presently given to Koll for its exclusive use until environmental and traffic impact reviews made of the traffic impact of

the Koll project which has eliminated all other buildings in the area from the use of the parking facilities and thus has caused an adverse traffic impact and that plaintiffs be awarded reasonable attorney's fees and costs pursuant to § 1021.5 of the California Civil Code of Procedure.

Wherefore, plaintiffs pray judgment as hereinafter alleged.

COUNT TWO  
CIVIL RIGHTS ACT

[Title 42, USC Sec. 1983]

75. Plaintiffs, by reference, here incorporate by reference the allegations of paragraphs 1 through 74.

76. Defendants City Redevelopment Agency, Taylor and unnamed co-conspirators in combination and conspiracy with defendant Koll, acting under the color of Community Redevelopment Law, City Ordinances and Resolutions including Resolution 2311 and Ordinance 57333, a sham amended redevelopment plan, and sham condemnation proceeding arbitrarily and discriminatorily deprived plaintiffs of due process and equal protection of law and of their property rights, including the economically viable use of their investment backed expectations, by various means including the following.

(a) Arbitrarily and discriminatorily deprived plaintiffs of due process and equal protection of the Community Redevelopment Laws, § 33000 of Health and Safety Code, when they induced plaintiffs to build the largest office building in San Jose with the promised protection of the policy and intent of the Community Redevelopment Law which is intended to protect developers who have made their investment in redevelopment areas.

(b) Arbitrarily and discriminatorily deprived plaintiffs of due process and equal protection of the Parking District I parking ordinance, which was in effect at the time plaintiffs made their investment and acquired their property right of economically viable use of their investment and similarly deprived plaintiffs of the protection of Parking Management

Ordinance passed on 3/21/84 which announced the policy and intent to provide for joint venture development of parking garages with private developers and the City.

(c) Plaintiffs have been arbitrarily and discriminatorily deprived of due process and the equal protection of law because tax increments from property taxes paid by plaintiffs and other developers in the project area were not used according to the Redevelopment Plan and were instead unlawfully diverted to Koll for its exclusive use and profit in violation of § 33433 of the Health & Safety Code.

77. Defendants City and Agency officials and Taylor and others, having knowledge of the conspiracy to deprive plaintiffs of due process and equal protection of law and property right of economically viable use of their investment, and having the power to prevent those wrongs, neglected and refused to act to prevent the wrongs.

78. As the direct and proximate result of said defendants' actions, conspiracy, and neglect, plaintiffs have been injured in that the economically viable use of their building is totally destroyed as described herein. Said damage is continuing but can be reasonably estimated and expected to exceed \$56 million dollars.

79. Defendants caused such damage and are therefore liable, pursuant to the aforesaid Civil Rights Act of 1871, Title 42 USC Sec. 1983, in the amount of said damage. The individual plaintiffs and KOLL are also liable for punitive damages in the sum of \$100 million.

### COUNT THREE

#### (PROMISSORY RELIANCE)

80. Plaintiffs, by this reference, here incorporate the allegations of paragraphs 1 through 79 above.

81. Defendant City, and Redevelopment Agency, acting through its agents, made numerous promises and representations to plaintiffs, including those alleged above. The substance of the promises as stated in Count One was that, in one way or another,

adequate parking space would be provided for an office building of the size plaintiffs were induced to plan, develop and build. When making those promises and representations, the City and Agency knew the true facts concerning plaintiffs' plans, Koll's plans and the planned provision for parking.

82. Defendant City, and Redevelopment Agency, when making the aforesaid promises and representations, intended that plaintiffs would rely upon those promises and by continually reassuring plaintiffs and by other means acted in such a way that plaintiffs reasonably believed that the City and Agency intended that plaintiffs should rely upon those promises.

83. Plaintiffs were ignorant of the true state of facts and continually believed that adequate parking would be provided, that the City and Agency were negotiating in good faith, and that the City and Agency would act as promised.

84. Plaintiffs relied upon the promises and representations of the City and Agency and as a result have been and are continuing to be injured in an amount which is not now certain but which can be reasonably estimated and expected to exceed \$56 million dollars.

85. Defendant City's and Agency's failure to provide parking space without any rational relationship to any permissible interest of the City will injure rather than benefit the public. No policy adopted to protect the public will be defeated by a requirement that the City and Agency either provided for parking as promised and according to the policy and intent of the Parking Management Ordinance or pay such damages as will permit plaintiffs to provide for such parking.

86. Plaintiffs, in effect, complied with Government Code §§ 905 and 911.2 by the service of the Complaint heretofore filed with this Court in December, 1984. Plaintiffs filed their claim against the City of San Jose pursuant to Article 2 of Government Code section 911.2 simultaneously with the filing of their "First Amended Complaint", within the one-year period after the occurrence of the cause of action, which was November, 1984 (a copy of which is attached to the First Amended Complaint and marked Exhibit "B"). Further compliance would be useless and an

additional claim against the Redevelopment Agency separately is not required in that Defendant City and Redevelopment Agency have clearly refused all of plaintiffs' claims and have both denied in their answers to plaintiffs' original complaint "that any commitments regarding parking facilities were made to plaintiffs." Plaintiffs' claim was again denied by the City of San Jose on April 29, 1985.

#### FOURTH CAUSE OF ACTION (INVERSE CONDEMNATION)

87. Plaintiffs, by reference, here incorporate the allegations of paragraphs 1 through 86 above.

88. At all times mentioned herein, plaintiffs were the owners of three parcels of real property within the Pueblo Uno project area located at 55 South Market Street in the City of San Jose.

89. By reason of the action and conduct as alleged herein in paragraphs 1 through 86, and the adoption of Resolution 2316 and Ordinance 57333 by the City legislative body, plaintiffs have been and will be damaged by Defendant City's and Agency's conduct and plaintiff's property right to enjoy its economically viable use of his investment-backed expectation will be totally destroyed. Defendants' acts and plaintiffs' reliance on the City's and Agency's promise, as stated herein, have caused the diminution of the value of property, lost income, lost profits, lost investment expectations and loss of good will in a sum of excess of \$100 million.

90. Plaintiffs have received no compensation for the damage to their property.

91. Plaintiffs have incurred and will incur attorney's, appraisal and engineering fees because of these proceedings in amounts that cannot as of yet be ascertained, which are recoverable in this action under the provisions of § 1036 of the Code of Civil Procedure.

Wherefore, Plaintiffs pray for judgment as follows:



1. For Count One, against Defendant Koll for damages in the amount of \$56,000,000, said damages to be trebled according to law, and for attorney's fees;

2. Plaintiffs have no adequate remedy at law so that unless this Court immediately takes the following actions plaintiffs' property right of economically viable use of their investment-backed expectation and property will be totally destroyed.

(a.) That Defendants, their successors, assigns, transferes, officers, directors, members, agents, and employees, and all persons acting or claiming to act on behalf thereof, be permanently enjoined and restrained from directly or indirectly continuing, maintaining, or reviewing the unlawful combinations, conspiracies, and attempt to monopolize, as alleged herein, and from engaging in other combination or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

(b.) That defendant City be ordered to permit plaintiffs to joint venture a dedicated portion of the Market Street Garage paying a pro-rated share of the expense, in accord with the policy and intent of the Parking Management Ordinance passed on March 21, 1984, and in the interim until their Market Street garage addition is completed, plaintiffs be allowed to lease from the City 300 parking spaces at prevailing rates either in the existing garage, and/or in the Koll project garage or in nearby City facilities and parking lots.

(c.) That defendant Koll, its agents, etc. be enjoined from continuing to build the garage on the property given to them until an analysis can be made of enlarging the garage to provide a fair and equitable pro-rata share of parking space to Koll, plaintiffs, and all other building owners in the Pueblo Uno Project Area.

(d.) That a constructive trust be imposed on the garage presently given to Koll for its exclusive use until environmental and traffic impact reviews have been made of the traffic impact of the Koll project which has prevented all other

buildings in the area from using the parking facilities and thus has caused an adverse traffic impact and that plaintiffs be awarded reasonable attorney's fees and costs pursuant to § 1021.5 of the California Civil Code of Procedure.

3. For Count Two, against all defendants, compensatory damages in the amount of \$56,000,000 and attorney's fees; and punitive damages against defendants Koll and Taylor in sum of \$100,000,000;

4. For Count Three, against defendants City and Agency, damages in the amount of \$56,000,000;

5. For Count Four, damages, including attorney's and other fees according to proof as authorized by statute;

6. For interest, costs, fees as provided by law and all other relief as the Court may deem just and equitable.

Dated: July 25, 1985

Law Offices of Herbert F. Kaiser

/s/ HERBERT F. KAISER  
Herbert F. Kaiser  
Attorney for Plaintiffs

Pursuant to Rule 38 B of the Federal Rules of Civil Procedure, Plaintiffs hereby demand trial by jury.

/s/ HERBERT F. KAISER  
Herbert F. Kaiser  
Attorney for Plaintiffs

CERTIFICATION

Pursuant to Federal Rules of Civil Procedure 11, I, Herbert F. Kaiser, certify that there is good grounds to support this Second Amended Complaint and it is not interposed for delay and I have complied with all the rules, procedures and policies as stated in Federal Rule of Civil Procedure 11.

/s/ HERBERT F. KAISER  
Herbert F. Kaiser  
Attorney for Plaintiffs

**Appendix D**

Herbert F. Kaiser, Esq.  
Law Offices of Herbert F. Kaiser  
Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

United States District Court  
Northern District of California  
NO. C-84-20772 WAI

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a Municipal Corporation and Subdivision of the State of  
California; Frank Taylor; the Koll Company,  
a California Corporation,  
Defendants.

Date: October 8, 1985

Time: 9:00 a.m.

Court Room: Honorable William A. Ingram

Supplemental Declaration of Herbert F. Kaiser in Support of  
Plaintiffs' Counter-Motion for Order Severing Hearing and in  
Opposition to Motions of Defendant City for Rule 11 Sanctions  
and for Order Striking Certain Portions of the  
Second Amended Complaint  
[Filed Sept. 17, 1985]

Clerk's Record Docket No. 90

I, Herbert F. Kaiser, hereby declare under penalty of perjury that:

1. I am a member of the bar of the State of California, I am admitted to practice in this court, and I am the attorney for plaintiffs herein. I make this declaration of my own personal knowledge, I am competent to testify to the matters stated herein, and if I am called as a witness I will so testify.

2. I personally took the enclosed photographs between February and May of 1985, in the Pueblo Uno Redevelopment Project Area. They show the nature of the area and of the injury to all surrounding office buildings which defendant Koll's monopoly of parking has inflicted.

1. Picture 1 shows the Koll marketing poster which offers an 800-car garage for tenants of and visitors to Koll's building.

2. Picture 2 shows the area behind the Koll building which has been set aside for Koll's parking garage and which extends all the way to the next block, First Street.

3. Picture 3 shows the area which has been set aside for Koll's parking garage and the fact that the Takamoto building, which comes right up to the building line of the garage, is landlocked and without any areas for parking.

4. Picture 4 shows the back of the American Bank and Trust building, which is immediately next to the Koll building, and the fact that the building was also built up to the street without any room for parking.

5. Picture 5 is another view of the American Bank and Trust building and the back alley of the Crocker Bank building which shows that both buildings were built up to street line without any room for parking.

6. Picture 6 shows the fronts of the Crocker Bank building and American Bank and Trust building, and the fact that both are built up to the street line.

7. Picture 7 shows the back of the Crocker building, and the fact that it was built up to the back street line without any room for parking.

8. Picture 8 is a front view of the Crocker Bank building, with the American Bank and Trust and Koll buildings further down the street next to each other.

9. Picture 9 shows the front of the American Bank and Trust building which was purchased by Koll in September, 1984, and the fact that it was built up to the street line immediately next to the Koll building, and without any room for parking.

10. Picture 10 is a front view of the Takamoto building which was built up to the street line and immediately adjacent to the Koll building without any room for parking.

11. Picture 11 is a front view of the Takamoto building which shows the limited amount of space which exists between the Koll and Takamoto buildings.

12. Picture 12 is another front view of the Crocker Bank and American Trust buildings which were built right up to the Market Street line.

13. Picture 13 is a front view of the Carl Swenson building which was built right up to the street line and immediately next to plaintiffs' Market/Post Street Tower building.

14. Picture 14 is a view of the church, the Takamoto building, the Koll building and the American Bank and Trust building with the Crocker bank building sandwiched closely together without any room for parking, and it also shows that the area was not blighted.

15. Picture 15 shows the back end of the Carl Swenson building and plaintiffs' Market/Post Street Tower building, and the fact that both buildings were built up to the street line without any room for parking behind.

16. Picture 16 is a front view of the plaintiffs' Market/Post Street Tower which goes right up to the street line; and

17. Picture 17 shows the entire Pueblo Uno Redevelopment Project Area down Market Street, including the Crocker Bank building, the American Bank and Trust building, the Koll building, and plaintiffs' building, and it also shows that the area was not blighted.



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Executed in San Francisco, California, this 17th day of September, 1985.

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Herbert F. Kaiser



A-70



*Sixty South Market*

15 STORY  
200,000<sup>sq</sup>  
OFFICE BUILDING  
800 CAR GARAGE

**KOLL**

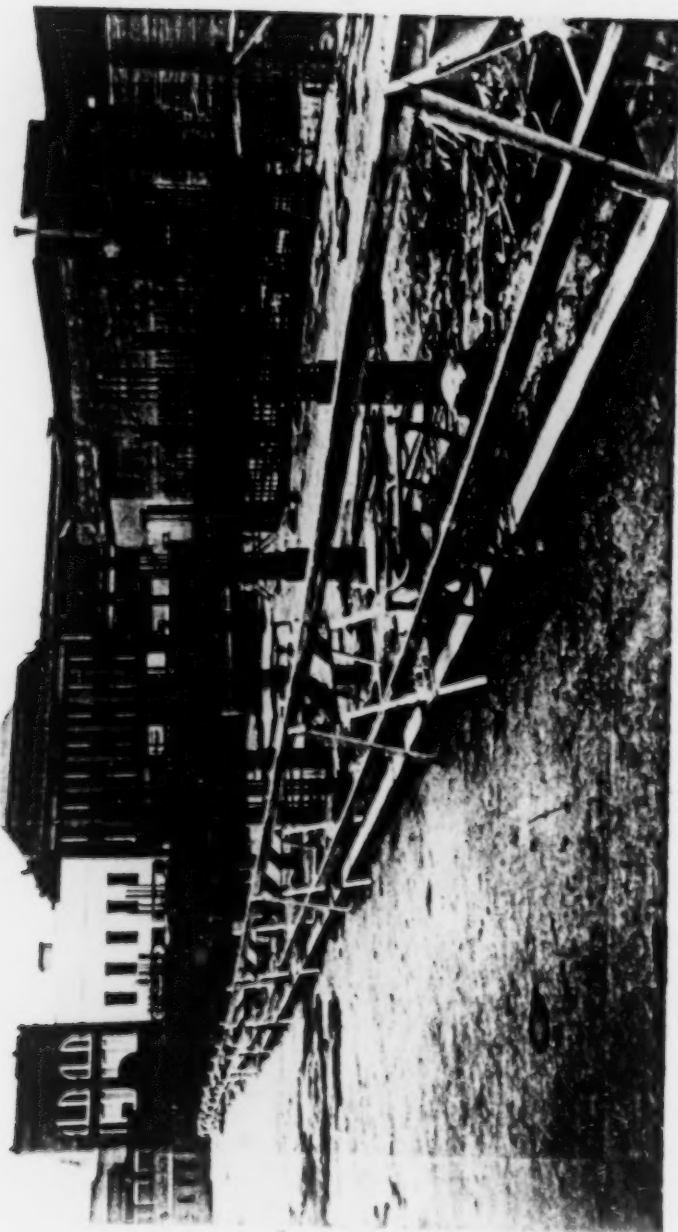
COMPLETION  
SPRING 1986

**(408) 280-6400**

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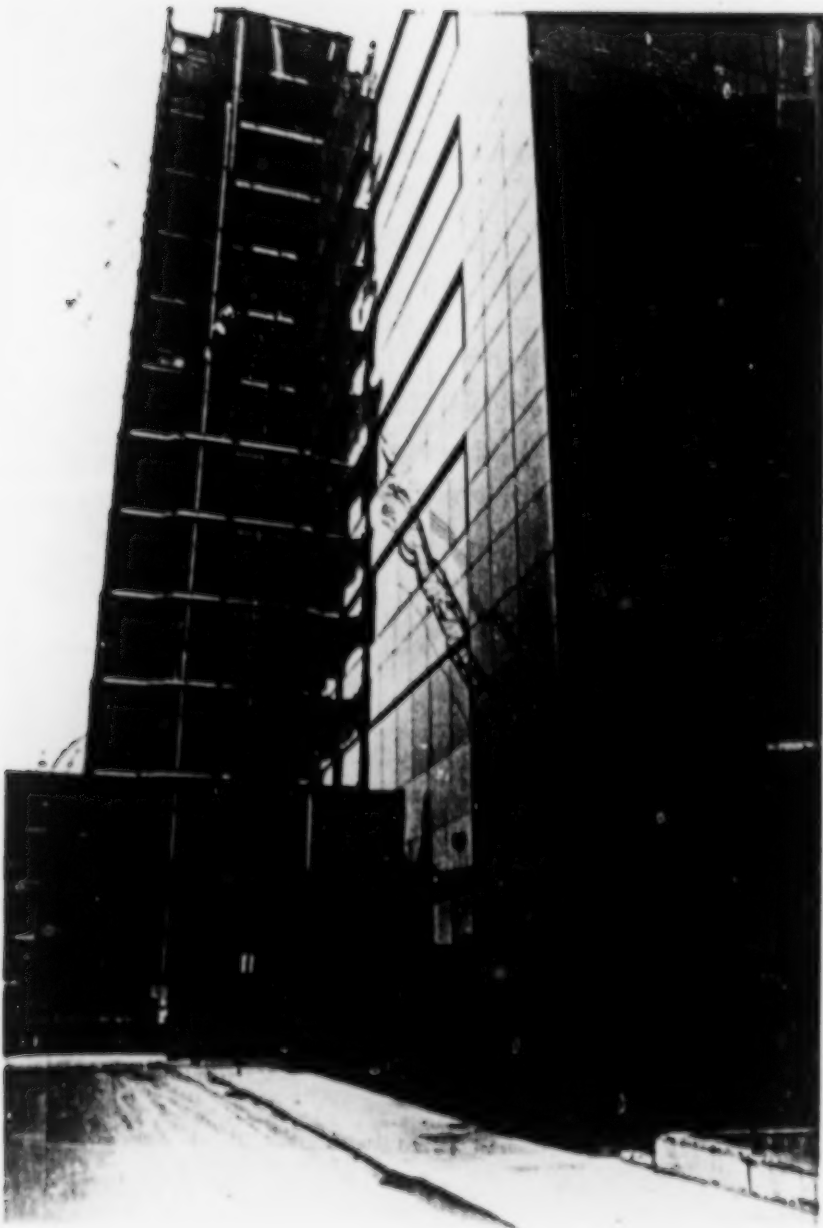


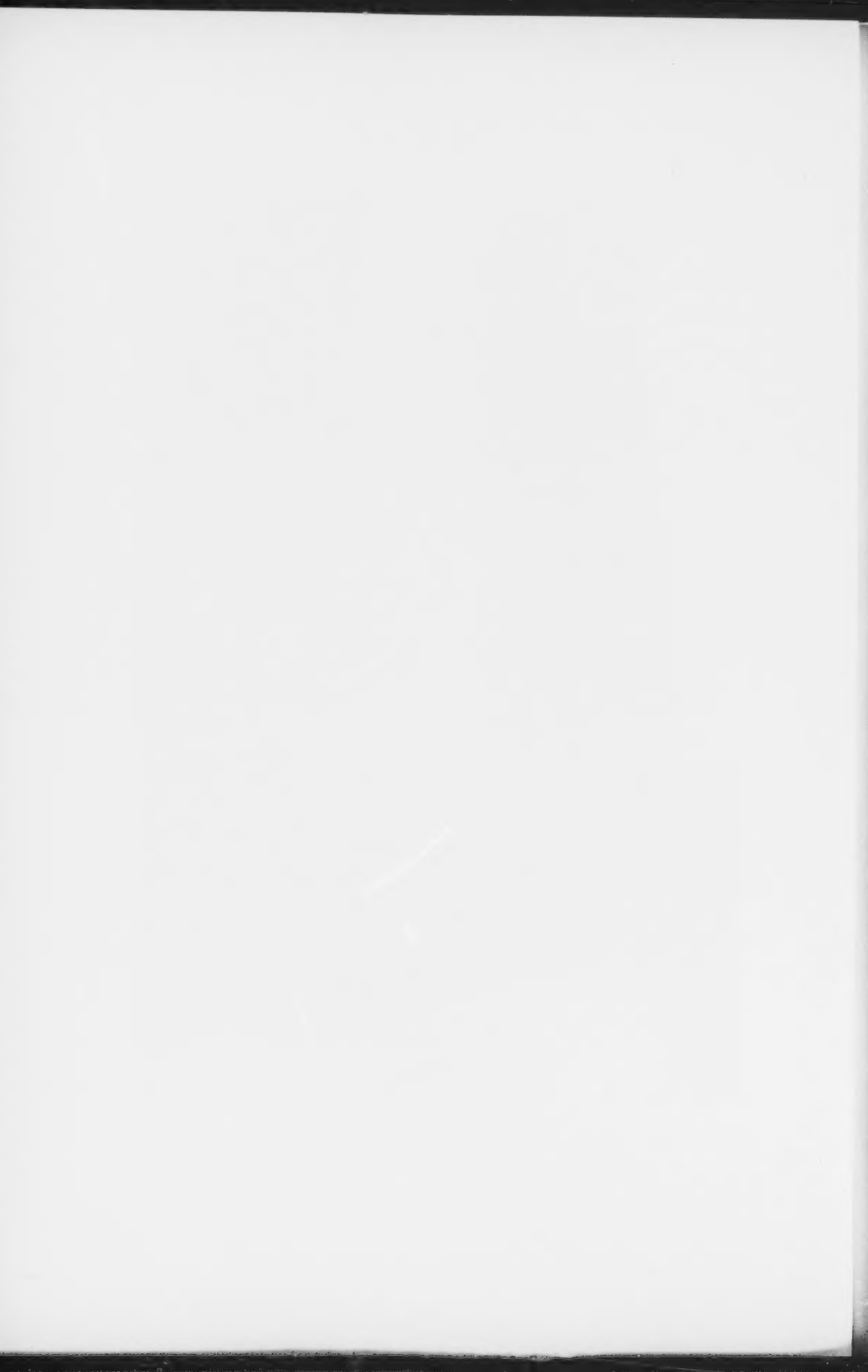
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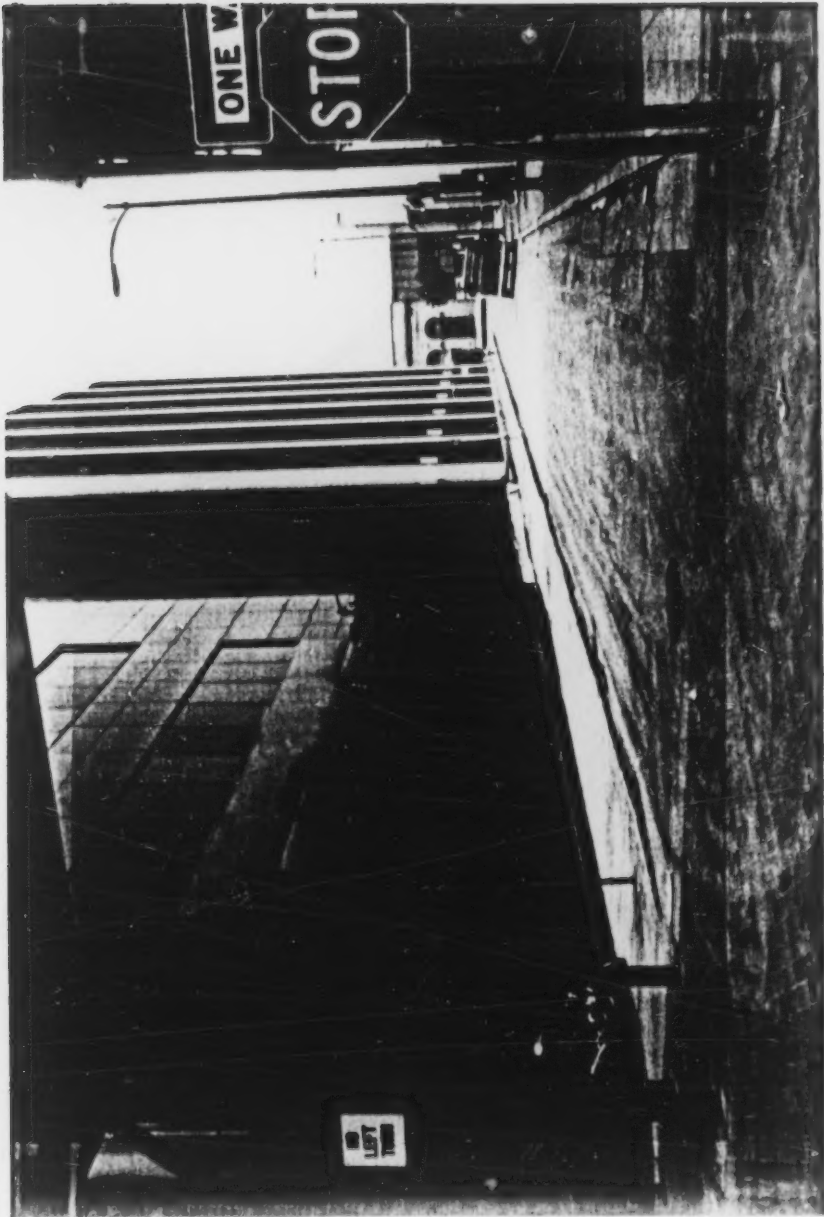


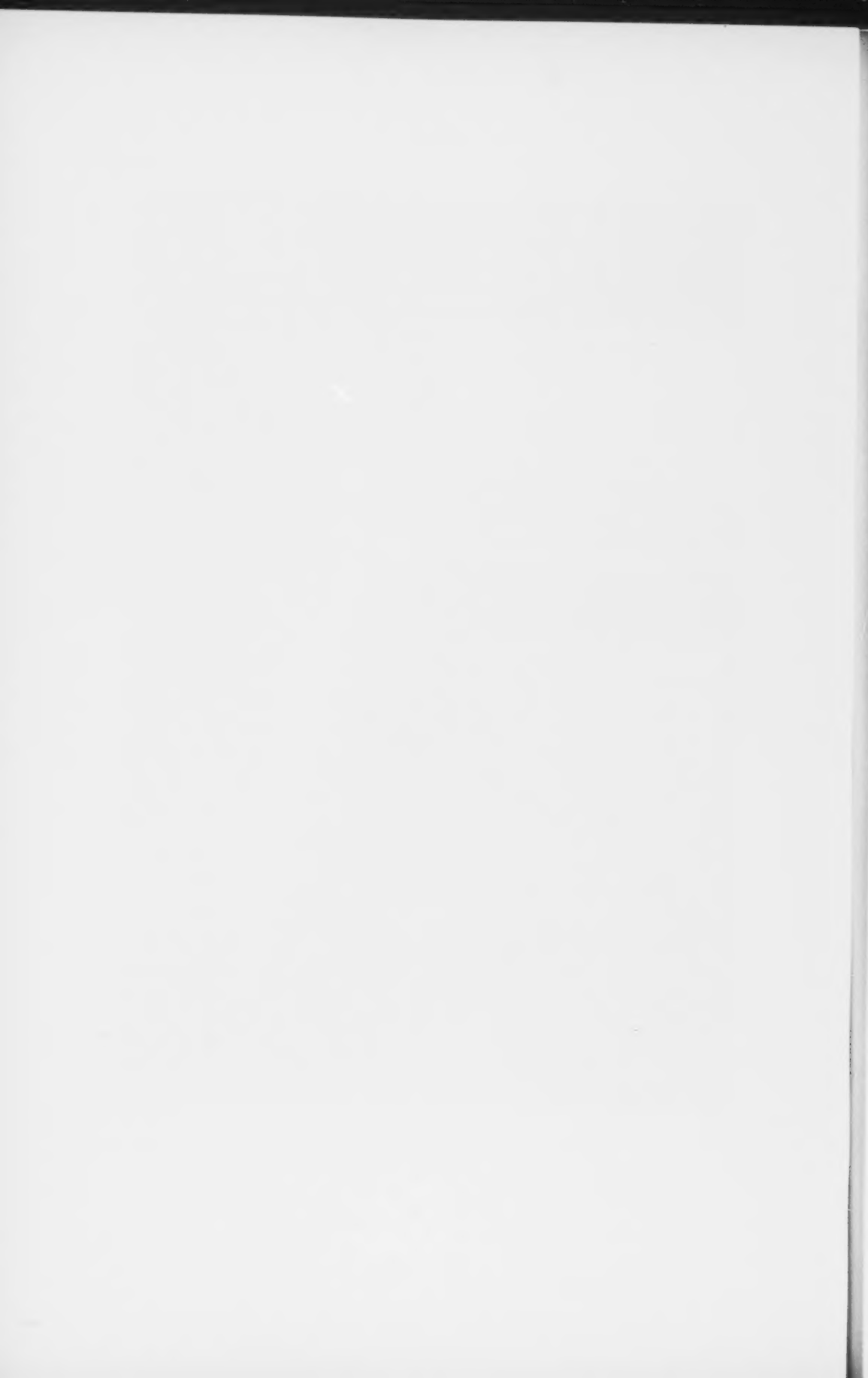
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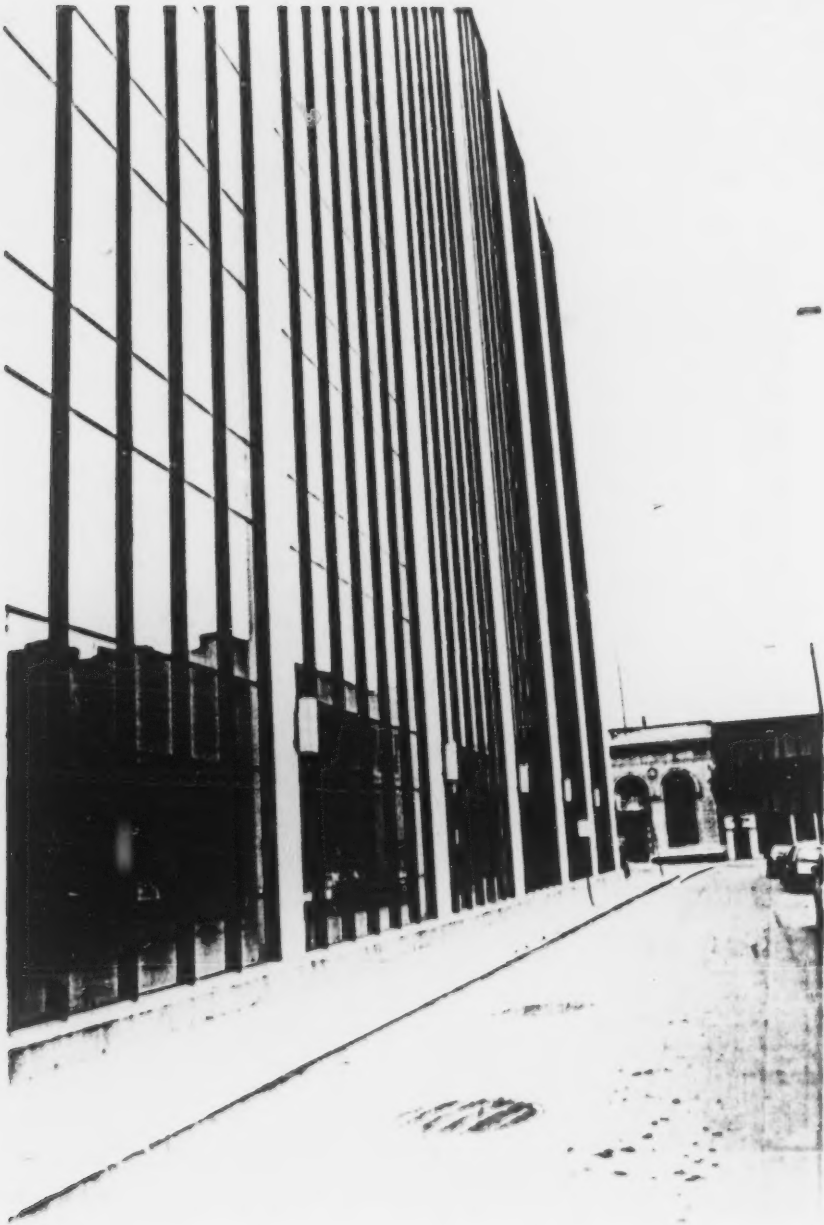


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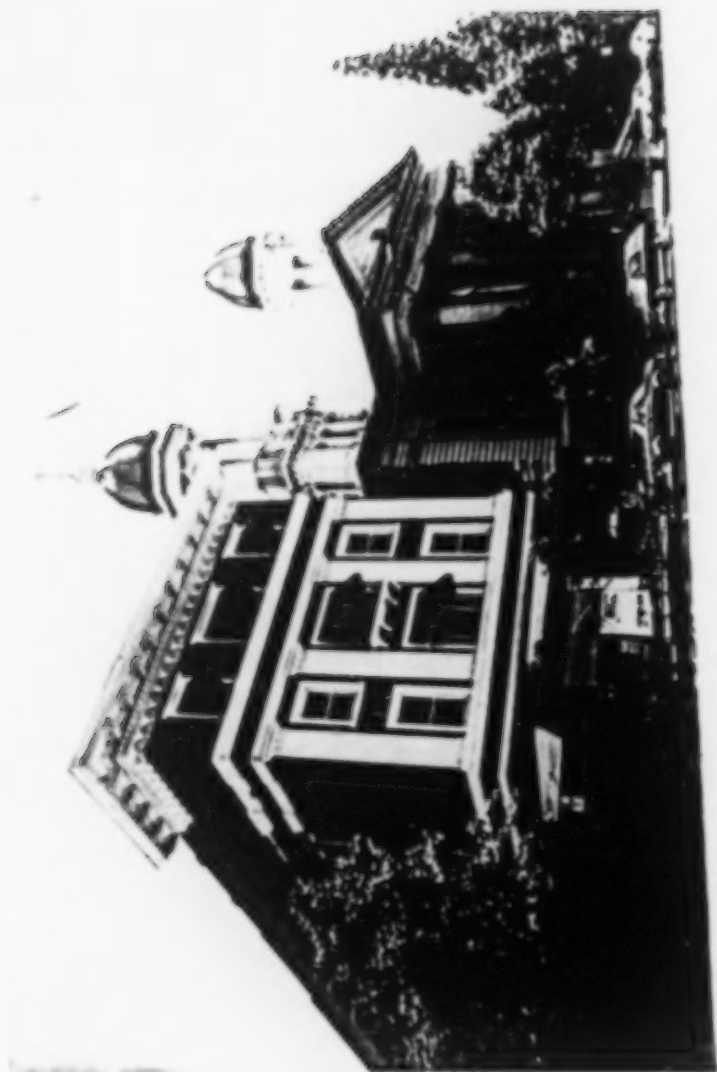
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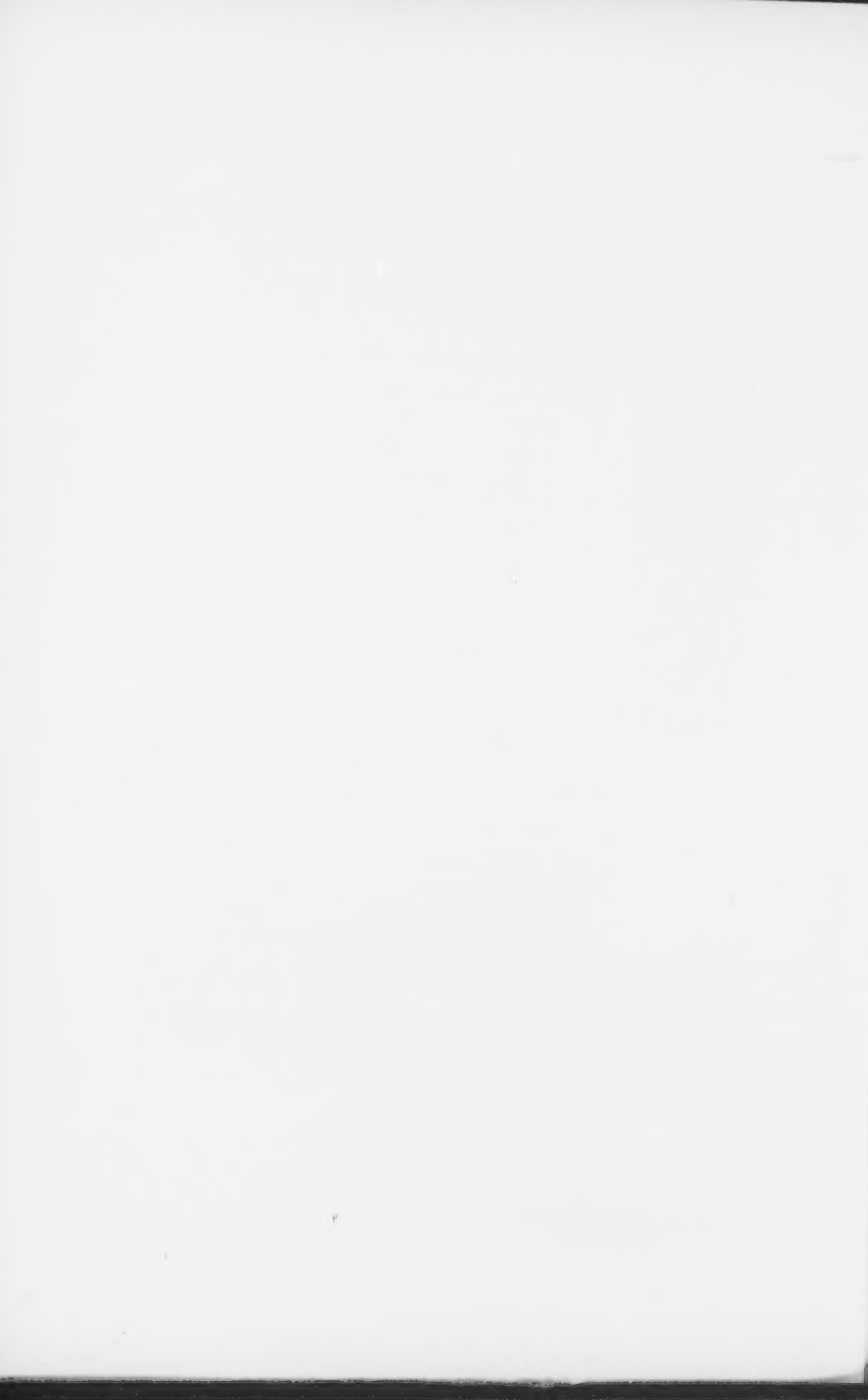
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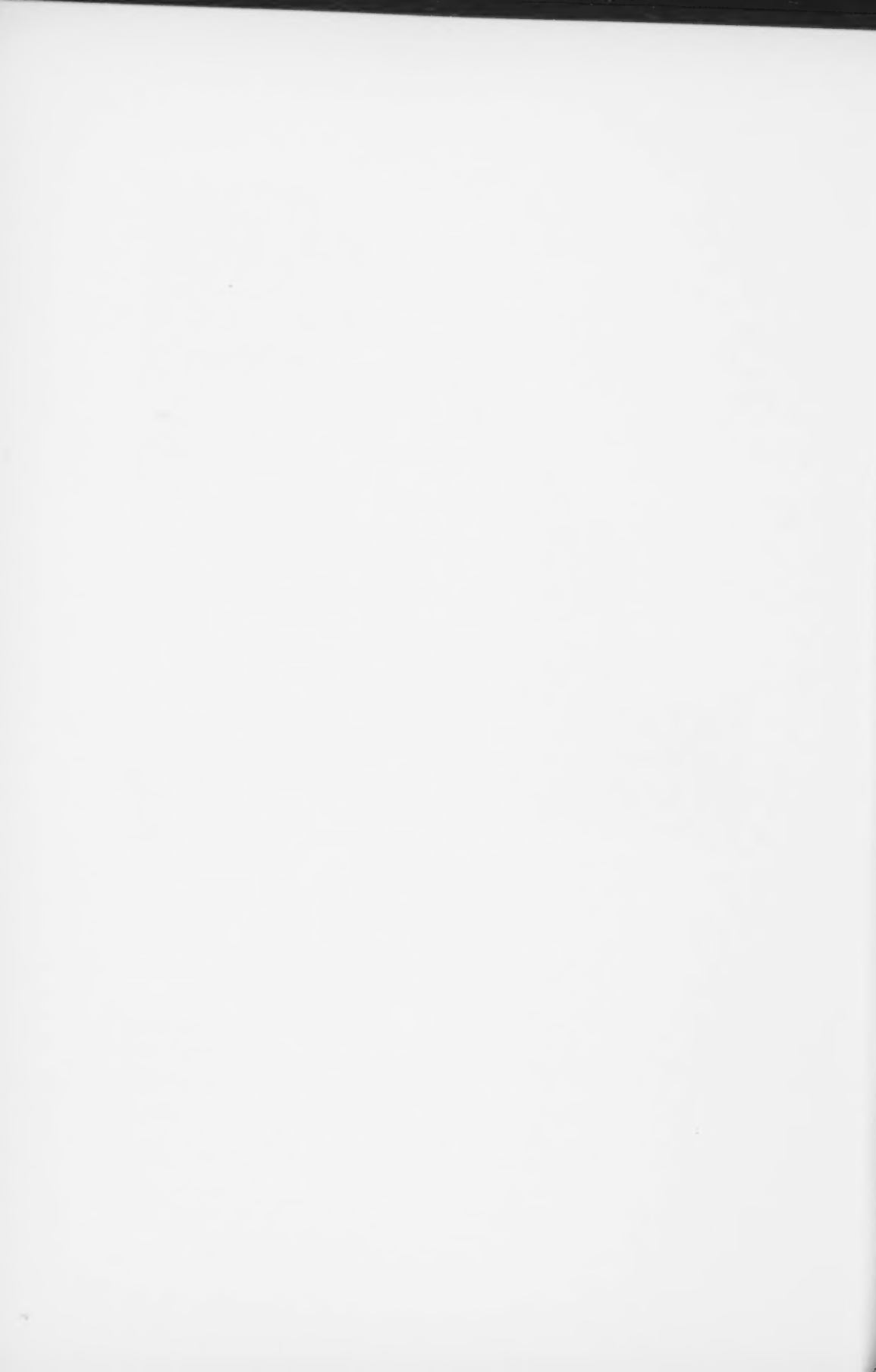
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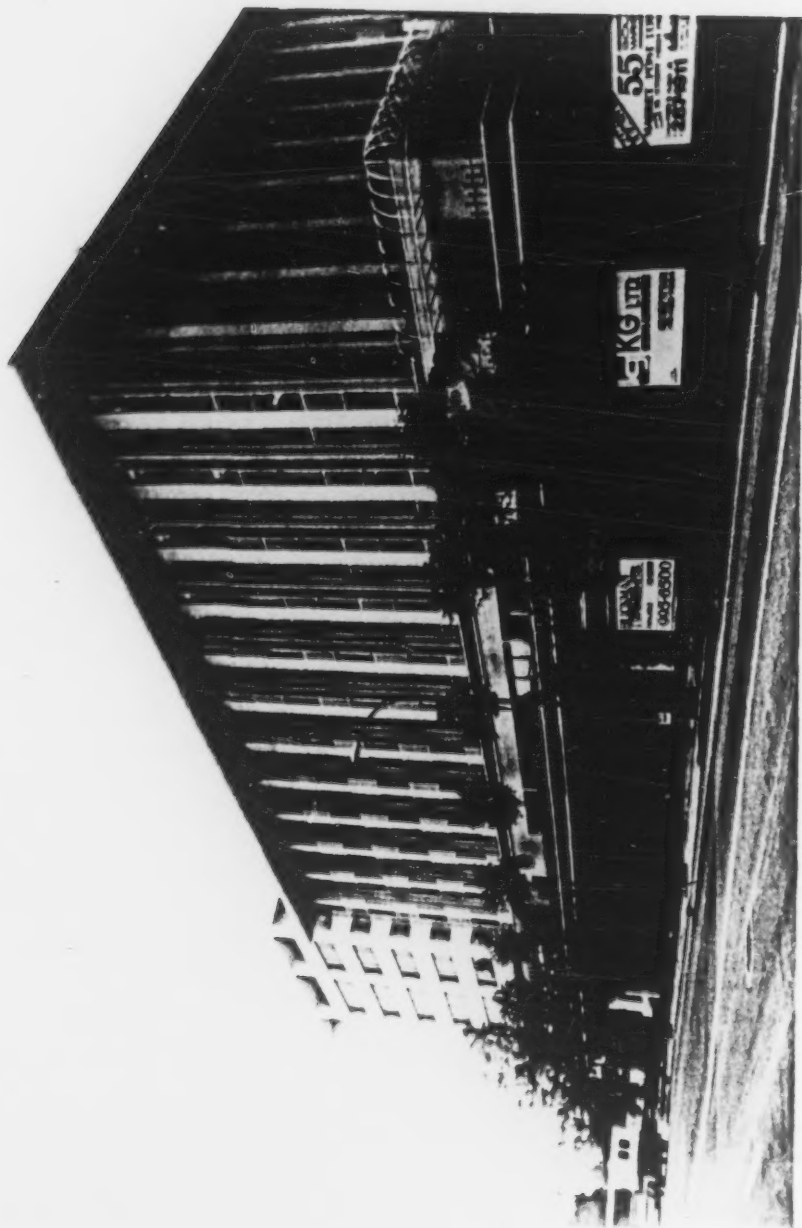
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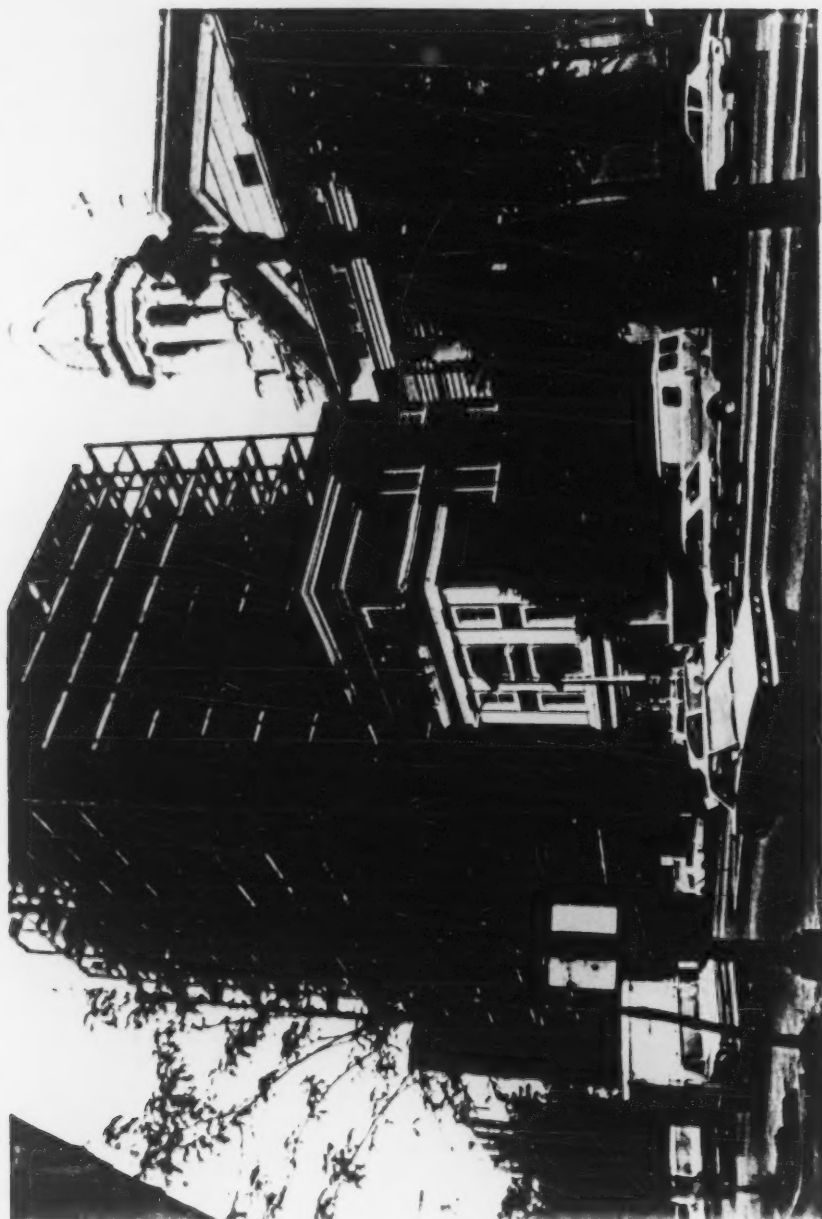


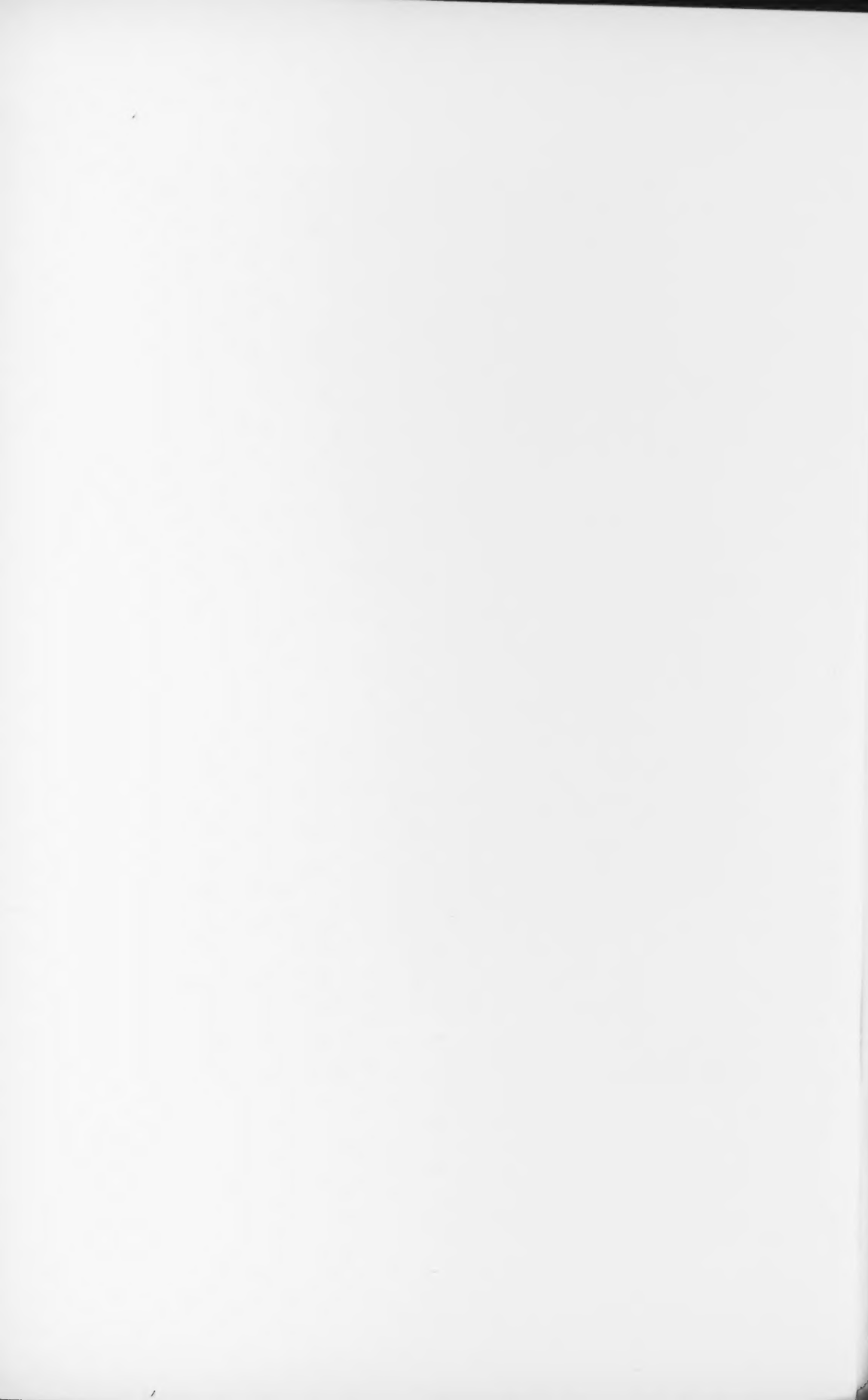
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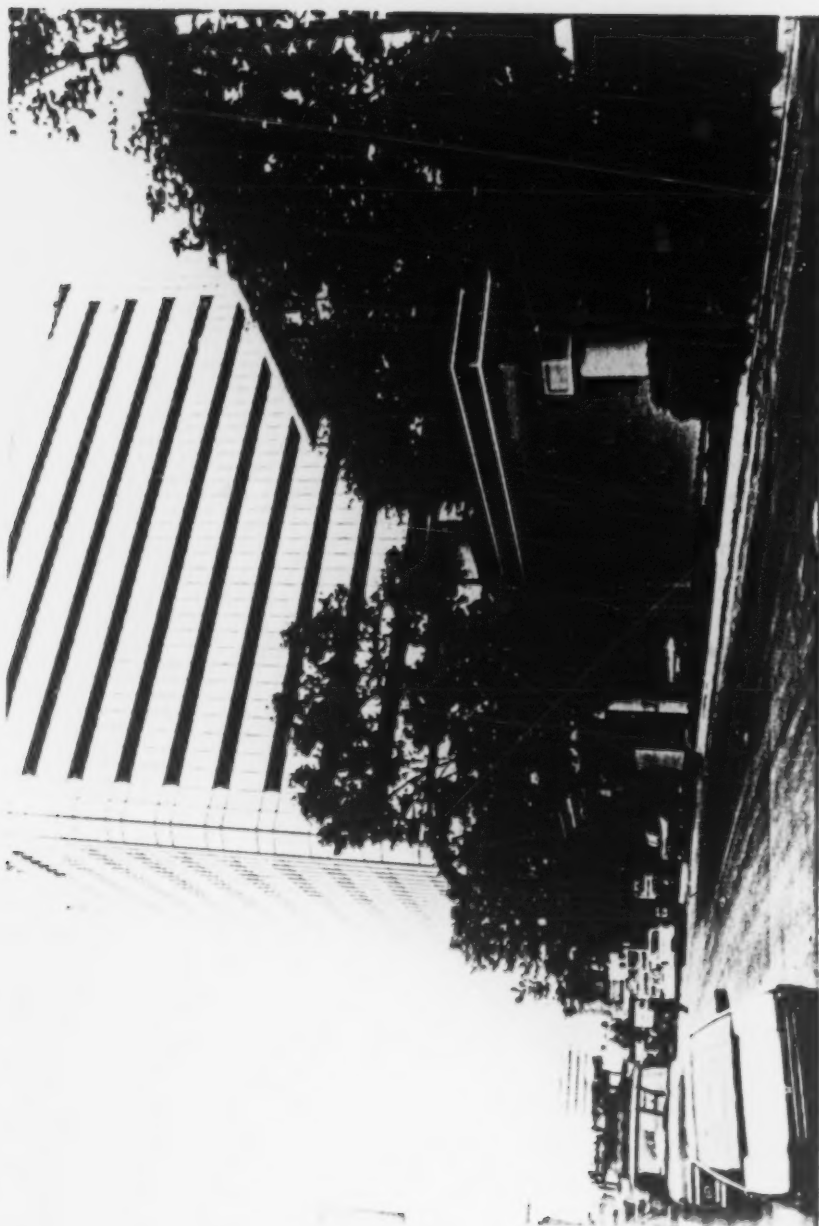




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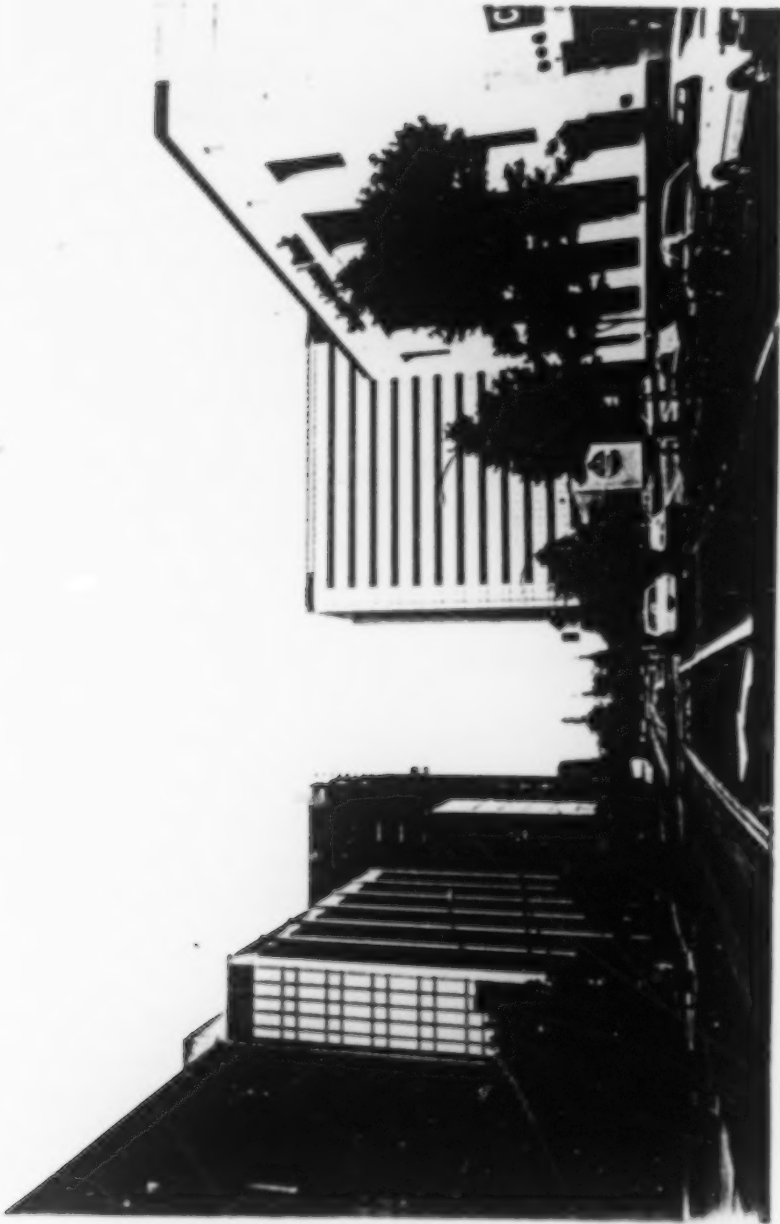
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A-86





**Appendix E**

Herbert F. Kaiser, Esq.  
The Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

United States District Court  
Northern District of California  
CASE NO. C-84-20772 WAI

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a municipal corporation and subdivision of the State of  
California; Frank Taylor; the Koll Company, a California  
Corporation,  
Defendants.

Plaintiffs' Reply to Defendants City of San Jose and Redevel-  
opment Agency of the City of San Jose's Response to Court's  
Order to Show Cause Concerning Retention of Jurisdiction

[Filed March 12, 1986]

Date: March 26, 1986

Time: 9:00 a.m.

Dept.: Honorable William A. Ingram

[001356]

Herbert F. Kaiser, Esq.  
The Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

Superior Court of California

County of Santa Clara

Case No. 594949

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a municipal corporation and subdivision of the State of  
California; Frank Taylor; Harry Mavrogenes; Dennis Korabiak;  
and Does I through XX, inclusive,  
Defendants.

First Amended Complaint For Damages: Equitable Estoppel;  
Inverse Condemnation; Declaratory Relief

[Filed March 11, 1986]

Plaintiffs allege:

First Cause of Action  
(Equitable Estoppel)

1. Plaintiffs David A. Boone ("Boone") and Stephen P. Fox  
("Fox") are individual citizens of the State of California, and are  
general partners in DSC-3 Group, a California Limited Partner-  
ship, and Market/Post, Ltd., a California Limited Partnership.  
Plaintiffs David Goglio and Donald Goglio (hereinafter collec-  
tively called "Goglio") are individual citizens of the State of

California, and are general partners in 3-G's, a California Limited Partnership. All individual plaintiffs reside in the County of Santa Clara and the limited partnership entities are duly licensed to transact business in the State of California with their principal place of business in Santa Clara County.

2. Defendant Redevelopment Agency of The City of San Jose ("Agency") is a public agency organized and existing under a resolution of the City Council of San Jose.

3. Defendant City of San Jose ("City") is a municipal corporation, and a subdivision of the State of California.

4. Defendant Frank Taylor ("Taylor") was at relevant times Executive Director of defendant Redevelopment Agency of the City of San Jose. Defendant Harry Mavrogenes ("Mavrogenes") was at all times relevant Downtown Coordinator for defendant City of San Jose and its Redevelopment Agency. Defendant Dennis Korabiak ("Korabiak") was at all times relevant Parking Contract Coordinator for defendant City of San Jose and its Redevelopment Agency.

5. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does I through XX, inclusive, and therefore sue those defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities when ascertained. Plaintiffs are informed and believe and thereon alleges that each of said fictitiously named defendants is responsible in some manner for the occurrences herein alleged.

6. Defendants have acted as agents of one another and plaintiffs are informed and believe and thereon allege that at all times herein mentioned each of the defendants sued herein as Does I through XX, inclusive, was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

7. On July 8, 1975, the City Council of San Jose, acting as defendant Redevelopment Agency, approved the Pueblo Uno Redevelopment Plan by City Ordinance No. 17778 and Agency Resolution No. 1714, hereinafter referred to as "the Plan" (a copy of which is attached hereto and marked Exhibit A). The

concept and objective of "the plan," was to redevelop the Pueblo Uno Project Area of downtown San Jose, by private enterprise alone, in order to promote growth and fair economic competition by attracting private investment without public assistance or condemnation proceedings. Defendant City and Agency provided in the plan that in order to accomplish these goals, and as an incentive for private development defendant City would provide the necessary infrastructure such as "parking and traffic facilities essential to the operation of the businesses" in the area. Financing for the infrastructure and parking facilities would be provided from tax increment and assessment districts initiated and created by the city to collect revenues from property owners within the project area or from other areas as needed. City was to provide parking facilities within the project area and use these parking revenues collected from tenants and visitors of building in the project area to provide additional parking facilities for the project area.

8. As a result of the enactment of "the Plan" with above-described inducements, defendants attracted over \$50 million in private investment from 1975 through 1982 which, by the end of 1982, had developed approximately 327,000 sq. ft. of office space in the area. Thus, private enterprise has eliminated blight without the expenditure of any City or Agency funds except for street and landscape improvements. By 1982 property values in the project area were increased raising additional tax revenues and the project area was "experiencing a great deal of development interest and activity" and private development of the project area was "expected to contribute significantly to the future construction activity" in downtown San Jose and yield substantial benefits to the public at large.

9. From April 1982 through June 1, 1983, defendants City and Agency, using the said "plan" through defendant Harry Mavrogenes, induced plaintiffs to invest \$56 million in developing and building the largest office building in San Jose in the project area. The "Downtown" San Jose 1995 Final Environmental Impact Report adopted according to California Environmental Quality Act guidelines in April 1983 provided for a City parking



facility in the project area for the developers of office buildings and retail stores pursuant to "the plan."

10. Defendants, and each of them, knew that plaintiffs would rely upon the abovementioned "Plan" and policies in building their office building, and plaintiffs, in fact, did so.

11. On June 1, 1983, the Planning Commission and Building Department of the City of San Jose issued to plaintiffs a building permit which had been approved by defendants City Council and Agency after their full review and approval of the parking provisions negotiated by defendants Mavrogenes and Korabiak providing plaintiffs two parking spaces for every thousand square feet of rentable office space, 300 parking spaces in City owned parking facilities and 300 spaces provided by plaintiffs in their building.

12. From June 1, 1983, through November 19, 1984, defendants Harry Mavrogenes, Dennis Korabiak and Frank Taylor continued to represent to plaintiffs that defendant City and Agency would honor "the plan" and provide essential parking facilities provided for in the building permit approval process, as stated above, and plaintiffs continued to believe those representations, and invested \$56 million, built their building in reliance thereon and have therefore perfected their rights according to "the plan" and building permit approval as stated above.

13. On December 6, 1983, the City Council acting as the Agency adopted its Fourth Amended Pueblo Uno Redevelopment Plan Ordinance No. 215210, Agency Resolution No. 2316, which provided in part, for "adequate land for parking" to developers in the project area as stated above (a copy of said amended plan is attached and marked Exhibit B.)

14. On March 21, 1984, the City Council passed the "Downtown Parking Management Ordinance" which provided, in part, for joint venture development by defendant City and private developers of parking facilities essential to the operation of developers' businesses. (A copy of a letter received from the city regarding Joint Venture of the parking facilities is attached hereto and marked Exhibit C.) At that time defendants Mavrogenes, Korabiak and Taylor represented to plaintiffs that the "Downtown Parking Management Ordinance" again supported and accom-

plished the intent of "the Plan" to provide adequate land for parking and parking facilities which were essential to the operation of plaintiffs' business.

15. On November 19, 1984, defendant City, through defendants Harry Mavrogenes and Dennis Korabiak, and defendant Agency, through defendant Frank Taylor, refused to provide the essential parking facilities and/or adequate land for parking, and for which they had provided for in the building permit approval process.

16. Plaintiffs are informed and believe and therefor alleged that defendants, and each of them, never intended to provide plaintiffs with parking facilities essential to the operation of their business or adequate land for parking as stated in the building permit review process and continued to deceive plaintiffs into believing they would. Plaintiffs had no knowledge of defendants' deception nor did they have the means of acquiring such knowledge.

17. As a result of defendants' above-described conduct, plaintiffs have been and are continuing to be injured by the diminution of value of their property, lost income, lost profits, and lost investment expectations in an amount which is not now certain, and plaintiff will ask leave of this court to amend this complaint to set forth those amounts when they have been ascertained.

18. Defendant City and Agency's failure to provide the parking facilities which are essential to the operation of plaintiffs' office building and/or adequate land for parking, as approved in the building permit approval process, will injure rather than benefit the public and will defeat no public policy. An order of this court requiring defendants City and Agency either to provide essential parking according to "the Plan" and building permit approval process and the intent of the Parking Management Ordinance, as stated above, or to pay such damages to plaintiffs as will permit them to provide such parking.

19. Plaintiffs have prosecuted this claim, as well as that for inverse condemnation which is contained in plaintiffs' third cause of action below, as pendent claims in the United States District Court for the Northern District of California in Case No. C-84-

20772-WAI. That case originally was filed on December 12, 1984. That court dismissed the federal claims in that action on January 24, 1986, and has provided for dismissal of these pendent claims "without prejudice" to their reassertion in state court in said order. Plaintiffs previously had presented these pendent claims to the City of San Jose on March 12, 1985, and defendant City had denied them on April 29, 1985.

WHEREFORE plaintiffs pray judgment as hereinafter set forth.

## SECOND CAUSE OF ACTION (DECLARATORY RELIEF)

20. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1-19, of their first and second causes of action as though fully set forth again.

21. An actual and justiciable controversy exists between plaintiffs and defendants, and each of them, in that plaintiffs allege:

(a) Defendants, and each of them, have illegally implemented the Fourth Amended Pueblo Uno Redevelopment Plan, adopted December 6, 1983, by City Council Ordinance No. 215210 and Agency Resolution No. 2316, and the City and Agency Ordinance and Resolution No. 57333 adopted on March 29, 1984, by not complying and actually violating the California Community Redevelopment Law and the California Environmental Quality Act because: (1) they approved the expenditure of public funds for improvements in the Pueblo Uno Project Area which could reasonably and was actually being accomplished by private enterprise acting alone; (2) the challenged ordinances and resolutions were adopted without an environmental or supplemental impact report; (3) without notice to the property owners and businesses in the subject area of the Environmental and Traffic Review process; (4) and provided for the sale of property of the Agency acquired with taxing increment monies at less than fair market reuse value. The said conduct was in violation of Sections 33352, 33433, 56035 and 56040 of the Health and Safety Code of said California Community Redevelopment Law and in violation of

Sections 21000 *et seq.*, 21166 of the Public Resources Code of the California Environmental Quality Act.

(b) Plaintiffs did not discover the said illegal implementation of the plan until after November 19, 1985, because of the deception of defendants, therefore, by the Doctrine of Equitable Tolling these challenges are not time barred.

(c) Plaintiffs request that the court take judicial notice pursuant to section 452 of the Evidence Code of Superior Court Action, Case No. 553522, *Redevelopment Agency of the San Jose, et al. v. Alfonso DeTagle, et al.*, and Superior Court Action, Case No. 553519, *Redevelopment Agency of the San Jose, et al. v. Beverly Gable, et al.*, challenging the illegal implementation of the said ordinances and resolutions essentially on the same grounds including claims that said ordinances and resolutions were illegally implemented and/or failed to comply with California Civil Code of Procedure Sections 1245.210, 1245.255, 1245.270, 1245.310, 1245.390, as stated in the affirmative defenses in said action filed on September 27, 1984.

(d) Defendants, and each of them, dispute the allegations as stated in subparagraphs a) through c) above, *supra*.

22. Plaintiffs therefore request a declaration by this court that the defendants, and each of them, should comply with the said provisions of the California Redevelopment Law, California Environmental Quality Act and California Civil Code of Procedure as stated above in Paragraph 21a) and/or the ordinances and resolutions be set aside and declared invalid and illegal and without any force and effect.

23. Private enforcement is necessary since the above violations will not be corrected otherwise. Plaintiffs are therefore entitled to reasonable attorney's fees for the prosecution of these claims pursuant to California Code of Civil Procedures Section 1021.5.

WHEREFORE plaintiffs pray judgment as hereinafter set forth.

THIRD CAUSE OF ACTION  
(INVERSE CONDEMNATION)

24. Plaintiffs, by reference, hereby incorporate the allegations of paragraphs 1-19 of their first cause of action as though fully set forth again.

25. This cause of action is filed pursuant to Cal. Constitution Article I, Section 19.

26. At all times mentioned herein plaintiffs were the owners of three parcels of real property and developed a 315,000 square feet, 15 story office building, on said real property located at 55 South Market Street pursuant to the Pueblo Uno Redevelopment Plan adopted by the City of San Jose, the building permit issued by the City of San Jose on June 1, 1983 and therefore have perfected their rights as claimed herein.

27. Defendants, and each of them, have violated City Ordinance No. 17778 and Agency Resolution No. 1714 "the Plan, City Ordinance No. 215210 and Agency Resolution No. 2316 and the parking provisions of the building permit approved by defendant City and Agency on June 1, 1983, by not providing plaintiffs essential parking facilities and/or adequate land for parking as so provided for in "the plan" and building permit as stated in paragraphs 7 and 11 above. Defendants, and each of them, have failed and refused to comply with the "Downtown San Jose 1995 Final Environmental Impact Report" adopted April 1983, as stated in paragraph 9, regarding public parking facilities in the project area, and have failed to prepare a new or supplemental environmental report as required by the California Environmental Quality Act Public Resource Code Section 21000 *et seq.*

28. By reason of said acts and conduct defendants, and each of them, as herein alleged in Paragraphs 1-19, plaintiffs have therefor been damaged by the diminution of value of their property, lost income, lost profits, lost investment expectations, and loss of good will, in a sum which is unascertainable at the present time. Plaintiffs pray leave of court to amend this complaint when said sum is ascertained.

29. Plaintiffs have received no compensation for the damage to their properties.

30. Plaintiffs have incurred and will incur attorney's appraisal and engineering fees because of these proceedings in amounts which cannot as yet be ascertained, which are recoverable in this action under the provisions of Section 1036 of the Code of Civil Procedure.

WHEREFORE Plaintiffs pray judgment against defendants, and each of them, as follows:

1. Defendants be ordered to provide the legislatively promised parking as stated in Plaintiffs' First Cause of Action, paragraphs 7 and 11, and/or;

2. That plaintiffs be awarded their actual, compensatory damages according to proof;

3. That plaintiffs be awarded reasonable attorney's fees and costs of litigation under the California Code of Civil Procedure Section 1021.5

4. That defendants be ordered to comply with the Sections of the California Community Redevelopment Law, Environmental Quality Act and Code of Civil Procedure as so stated in paragraph 20, subparagraphs a) through c), and/or that the court declare that said challenged ordinances as stated in the second cause of action be declared invalid and illegal and without full force and effect.

5. For damages according to proof in the inverse condemnation cause of action;

6. For reasonable attorney's fees, appraisal and engineering fees according to proof as prayed for in the inverse condemnation cause of action;

7. For loss of income;

8. For loss of profits;

9. For loss of good will;

10. For pre-condemnation damages;

11. For interest, costs and fees as provided by law and as the court may deem just and equitable;

12. For such other and further relief as the court deems proper.

Executed this 11th day of March, 1986

/s/ HERBERT F. KAISER  
Herbert F. Kaiser  
Attorney for Plaintiffs



**Exhibit A**

**CITY COUNCIL**

Janet Gray Hayes, Mayor  
Roy Naylor, Vice Mayor

Joseph A. Colla	Jim Self
Alfredo Garza	Susanne Wilson
Larry Pegram	

**PLANNING COMMISSION**

Mike Honda, Chairman  
John Ulrich, Vice Chairman

Wilfred E. Blessing	Pat Shelton
Daniel J. Caputo	William Bell
Margaret J. Murphy	Valerie Watt (ex-officio)

**3. Parking**

Private parking shall be permitted in conjunction with retail or office developments. Interim surface parking is permitted in phased developments, ultimately to be replaced by retail or office uses at the first floor level. Parking shall serve the short-term demand generated by the permitted land uses. The long-range objective is to eliminate curb and surface parking in the core area. However, phased development must consider the needs of existing business. There is no intent in this plan to reduce the parking and traffic facilities essential to the operation of present business.

The intent of the Core Area Plan is to develop off-street parking for short-term commercial uses and residential uses conveniently located at the generators of activity. Long-term



parking for such commercial uses is intended to be provided around the periphery of the project with a traffic distribution network established to connect those areas with the core. The City is now discussing with the County Transit District ways and means of developing a shuttle system connecting off-street parking, peripheral parking and activity centers within the core area.

## PROJECT PROPOSALS

### 301 Owner Participation and Rehabilitation

A. This Redevelopment Plan identifies general planning and design objectives which will enhance and strengthen the renewal area and encourage the physical rehabilitation of buildings in the area. The goal of property rehabilitation is to provide a safe, sanitary, functional, and attractive environment. Fundamental to this goal is the rehabilitation of all existing commercial buildings to a safe and sound condition—to a condition meeting minimum present-day standards for health, safety, sanitation, and welfare, and to a condition sufficient to provide reasonable protection against the reoccurrence of blighting conditions. Redevelopment Agency participation will include the provision of technical assistance to property owners to facilitate and stimulate achievement of rehabilitation standards and objectives.

B. An owner or owners of property in the Project Area may participate in the redevelopment of property in the Project Area in accordance with rules adopted by the Agency as they may be amended from time to time and on file in the offices of said Agency. Property owners may participate subject to the submission of proof to the Agency of their qualifications, financial responsibility, and execution of an Owner Participation Agreement.

It has been pointed out that the portion of the Pueblo Uno Project (east of Market Street) is conceived largely as a rehabilitation project. It is the intent of the Redevelopment Plan to retain the present land intensity and diversity of architectural styles, in the Project Area, whenever feasible and in conformance with the Core Area Plan. Cooperative public and private actions will be

undertaken for the preservation of structures which are determined to be of bonafide historical and/or architectural merit.

Because this project does not rely on condemnation proceedings to achieve its objective, the project must rest on the cooperative spirit of the City, the Redevelopment Agency, property owners and tenants of the Project Area to achieve success. The City of San Jose and the Redevelopment Agency will encourage viable rehabilitation programs but private cooperation will be required to implement the rehabilitation programs.

In the event an owner is unable to cooperate in the redevelopment or rehabilitation of his property and with the consent of the owner the Agency *may*, if funding sources are available, acquire (by purchase, lease, grant, bequest, or otherwise) all or a sufficient interest in the property in order to carry out the objectives of the Plan.

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**Exhibit B**

**PUEBLO UNO REDEVELOPMENT PLAN**

Prepared by

The Redevelopment Agency  
of the City of San Jose

Adopted by

The City Council on  
December 6, 1983  
Ordinance No. 215210

\* \* \*

F. The provision of adequate land for parking and open spaces.

\* \* \*

**EXHIBIT C**

City of San Jose—Memorandum

To See distribution below

Subject Downtown Parking Management Ordinance

From Dennis Korabiak, Parking Contract Coordinator

Date March 21, 1984

On March 21, 1984 the City Council approved amendments to the zoning code regulating parking requirements in the downtown. These amendments eliminated the "no parking required" provisions in the downtown parking district and reduced the City-wide requirements in the downtown outside the parking district. The Ordinance also clarifies certain code sections related to City-wide parking requirements. Listed below is a brief summary of these new requirements:

\* \* \* \*

Developers can meet the required parking utilizing three methods, either individually or in combination with one another. They are:

(a) Provide all parking on site.

(b) Provide parking off site within a reasonably walking distance under a joint venture agreement with another developer or under a joint venture agreement with the City of San Jose.

\* \* \* \*

Attached is a copy of the Ordinance and a map identifying the Ordinance boundaries. The Ordinance becomes effective April 5, 1984. If you should have any questions, please feel free to contact me at X5548.

/s/ DENNIS KORBIAK

Dennis Korbiak  
Parking Contract Coordinator

Distribution

Frank Taylor  
Les White  
William L. Phillips  
Gary J. Schoennauer  
Kent South  
Frank Brown  
Kent Edens  
Brad Pearson  
Joe Perez  
OCCD Staff  
Redevelopment Staff

**Appendix F**

Herbert F. Kaiser, Esq.  
The Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-1184  
Attorney for Plaintiffs-Appellants  
David A. Boone, Stephen P. Fox and DSB-2 Investments

United States Court of Appeals  
For The Ninth Circuit

No. 86-2506

DC# CU-84-20772 WAI Northern California  
San Jose

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSB-3 Group, et al.  
Plaintiffs-Appellants,

vs.

Redevelopment Agency of the City of San Jose, et al.,  
Defendants-Appellees.

**Appellants' Request To Take Judicial Notice**

Please take notice that pursuant to Rule 201, Federal Rules of Evidence, Appellants hereby request that the Court take Judicial Notice of the following Public Documents, Records of Legislative Proceedings and Public Notices:

EXHIBIT A: Assembly Committee on Revenue and Taxation Report Analysis of AB 203.

EXHIBIT B: Redevelopment Policy Statement—Third Draft by League of California Cities' Redevelopment Task Force.

EXHIBIT C: Public Notice to Property Owner, Tenant and Businessperson of hearing to Consider Amendments To the Pueblo Uno Redevelopment Plan of December 6, 1983.

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With respect to the above, Appellants attach hereto what the undersigned counsel certifies to be true and correct copies.

Dated: January 5, 1986

/s/ HERBERT F. KAISER

Herbert F. Kaiser  
Attorney for Plaintiffs-  
Appellants

**Exhibit A**

Assembly Committee on Revenue and Taxation

Thomas M. Hannigan, Chairman

AB 203 (Hannigan)

January 9, 1984

AB 203 (Hannigan), As Amended January 3, 1984

Subject: Revises Redevelopment Law

Consultant: Linda Wilson

Fiscal Effect: (Fiscal Committee: Yes)

State: Potential minor revenue gain due to school districts receiving normal 2% annual property tax increase in redevelopment project areas.

Other possible revenue gains due to potential decrease in number of redevelopment projects. (State reimbursements to school districts would decrease.)

Local: Potential minor costs to counties to comply with additional reporting requirements.

**Digest (What the Bill Does):**

*Under current law*, the legislative body of a local government may authorize the redevelopment agency of that government to select blighted areas of the community for redevelopment. (Most often, it is the legislative body, e.g., city council, which also sits as the redevelopment agency board). Blighted areas include property suffering from economic dislocation or disuse due to specified reasons such as faulty planning, inadequate public improvements and facilities, a prevalence of depreciated values, impaired investments, and social and economic maladjustment, and others.

When the redevelopment agency is formed, it "freezes" the property tax base in the area. Any increase in tax revenues (the tax increment) due to increased property values or inflation is used to plan, develop, clear, reconstruct or rehabilitate the area. Taxing entities (counties, school districts, special districts, etc.) continue to receive revenue from the "base" amount of assessed value as they did prior to the agency being formed, but do not



receive any of the growth in revenue, since tax increment is earmarked for redevelopment. However, the "pass-throughs" of some of the tax increment may be made if the entities involved agree.

The tax increment is available to the redevelopment agency in annual installments, but the agency may sell tax allocation bonds, pledging the annual increment to retire the bonds. A specified amount of the tax increment must be used for housing unless certain findings are made.

A redevelopment agency using tax increment financing must specify a limit on the amount of taxes to be diverted to the agency. An Extension of the time may be made by amending the plan. When the plan is complete and loans are repaid, the tax revenue increments which have been diverted to the agency and new revenues generated by improvements are directed to the taxing entities in the normal manner.

Other features of current redevelopment law relative to this bill are as follows:

- Land and buildings which are not deteriorated may be included in the project area but the law states that they be an integral part of the project and not be included for the purpose of obtaining a tax increment advantage without "substantial justification". Such justification consists of a finding by the agency.
- The agency may make payments to any taxing agency (other than the one adopting the project) of an amount of money necessary to alleviate any financial hardship brought about by the project.
- Prior to approval of a redevelopment plan calling for tax increment financing, the plan may be submitted to a fiscal review committee at the request of any affected taxing agency. The committee is composed of one representative from each affected taxing entity.

The purpose of the committee is to provide a formal means for local taxing agencies to advise the redevelopment agency of the

impacts of the plan on their jurisdictions and suggest amendments to the plan.

- The agency must notify county officials of the last equalized assessment roll which will be used to determine the allocation of taxes to all taxing entities from property in the project area.
- County officials must then prepare and deliver a report including specific information about the division of taxes to the agency and each taxing entity.
- The agency submits the report to the legislative body (e.g. city council) with the redevelopment plan. The agency must consult with each taxing entity receiving property taxes from the project area prior to notice of the public hearing at which the legislative body may approve the plan.

*This bill* is similar to AB 1545 (Hannigan) of 1983, vetoed by the Governor. According to the author, the Governor did not oppose the redevelopment portions of the bill, now included in this bill. Apparently, the veto was due to the economic development district authority in AB 1545. Such authority is *not* included in this bill. Otherwise, the bill is substantially in the same form as it passed the Legislature last year.

*This bill* would revise law related to redevelopment as follows:

1. Changes the Redevelopment Plan Adoption Process

The county would be required to prepare the assessed valuation report for the redevelopment agency and affected taxing entities within 60 days instead of 90 days under most circumstances.

The redevelopment agency would be required to provide more specific information earlier about the project. Specifically, it would be required to 1) send a copy of a draft environmental impact report to each affected taxing entity and to the fiscal review committee; 2) send to each affected taxing entity a preliminary report containing the reasons for the selection of the project area, a description of the physical, social and economic conditions in the area; and the proposed method of financing the

redevelopment; and 3) consult with the fiscal review committee, within 15 days of creation of the committee, to identify fiscal effects of the proposed plan and possible provisions to eliminate those effects.

The chairman of the fiscal review committee would be required to set a hearing between 15 and 30 days of transmission of the plan. The hearing could last up to 15 days. (Current law specifies 30 and 54 days.)

The fiscal review committee would be required to report to the redevelopment agency within 30 days of the hearing on the fiscal impact of the plan including any financial burden, as defined, to a taxing entity. (Current law specifies no such deadline for this requirement.)

If the fiscal review committee determines that the plan would cause a financial burden, such determination would be required to be supported by evidence and could include recommendations to eliminate the burden. Recommendations could include proposed amendments to the plan or proposed amounts of tax increment financing to be paid by the agency to affected taxing entities. (Current law is not specific regarding the contents of the fiscal review committee analysis.)

The redevelopment agency would be required to document with evidence of financial burden any payments to taxing entities.

Any time a redevelopment agency proposes amendments to a redevelopment plan which lengthen the life of the redevelopment plan or increase the dollars allocated to the redevelopment agency, the agency would be required to follow the same process that applies to new plan adoption.

## 2. Financial Burden Defined

The bill adds to redevelopment law a definition of "financial burden or detriment". The term is defined as 1) an increase in the quality or quantity of service provided by the affected taxing entity caused by the redevelopment project or 2) a loss of property tax revenues by an affected taxing entity produced by change of ownership or new construction which would have been received by the taxing entity if the redevelopment project had not

been established. The definition specifies that the normal allocation of tax increment to the redevelopment area does not constitute financial burden. This section would sunset after two years.

### 3. Blight Redefined

The bill revises the definition of blight to restrict its applicability as follows:

a. to emphasize that blighted areas must constitute a serious physical, social, or economic burden on the community which cannot be alleviated by private enterprise acting alone,

b. to eliminate as factors in determining blight:

(1) economic dislocation, deterioration, or disuse resulting from faulty planning,

(2) areas submerged by water.

### 4. Receipt of 2% Increase

The bill specifies that prior to adoption of the plan, every affected taxing entity may elect, and every school and community college district shall elect, to receive the increase in assessed value (up to 2%) which would have occurred regardless of the redevelopment project.

### 5. Vacant Land Excluded

The definition of "project area" in current law limits the amount of vacant land which can be included. This provision was enacted in AB 322, Chapter 1324 of 1983. This bill clarifies that provision by specifying that an amendment to a redevelopment area must also meet the criteria for a project area.

### 6. Use of Redevelopment Funds

The bill specifies that a redevelopment agency may not pay for normal maintenance or operations of community facilities or public improvements (e.g., city hall, roads) with its tax increment financing.

### 7. Effective Date

The author intends to amend an urgency clause into the bill.

STAFF COMMENTARY:

1. Purpose of the Bill

The purpose of this bill is to eliminate abuses of the redevelopment process by:

a. Improving the existing plan adoption process so that taxing agencies receive more specific information earlier, allowing them to better assess the fiscal impact of proposed projects;

b. Protecting taxing agencies by requiring redevelopment agencies to go through the normal plan adoption process when an amendment to a redevelopment plan is proposed;

c. Strengthening and reforming the fiscal review process by giving more specificity and direction with regard to the role and purpose of the fiscal review committee;

d. Protecting the state by reducing the ability of redevelopment agencies and counties to enter into agreements which result in the school districts, and therefore the state, paying for an inappropriate share of redevelopment projects by 1) narrowly defining the term "financial burden or detriment"; and 2) requiring all agreements between agencies to be based on findings and evidence of the financial burden or detriment;

e. Enabling all taxing agencies to obtain the 2% of the base year roll and further protect the state by mandating receipt of this 2% by school districts;

f. Defining the term "maintenance" to respond to the concerns of some counties that tax increment monies are used for normal maintenance of city improvements.

2. Non-Blighted Areas Included in Redevelopment Areas

Counties argue that many redevelopment project areas include much unblighted land. Thus, they say, such projects are really *development* projects. Cities often admit that redevelopment is one of the few remaining tools to finance growth.

The bill redefines blight to be more restrictive. Areas now called "blighted" solely because of flooding or non-specific faulty planning would not longer fit the criteria of blight under this bill.

### 3. Redevelopment Agency Imposes Financial Burden and "Owns" the Growth

Counties argue that cities (normally the local government body that establishes redevelopment agencies) have the unilateral power to impose tax increment financing upon other taxing agencies. The capturing of the tax increment by the agency causes a loss of revenue to the other taxing agencies.

They reason that much of the "redevelopment" attributed to formation of the agency is really "development" which might well have occurred without the project and the concomitant loss of revenue to other taxing entities.

This bill would not give counties or other agencies veto power over formation of a redevelopment agency, but would allow each affected agency (and mandate each school district) to receive the normal 2% revenue growth. Thus, assuming the growth would not have occurred, no taxing entity loses.

The bill would prevent sharing of the tax increment, beyond the 2% unless financial burden or detriment can be proven. Some counties would prefer to continue the practice of sharing revenues in any manner agreed upon, arguing that the definition proposed by this bill will be difficult to meet.

However, proponents of the bill argue that if more revenue is shared, the life-span of the project must be increased to accomplish the purpose of the plan. Further, they believe that the sharing of the 2% increase, combined with the new definition of financial burden and the requirement that agreements be based on more specific findings and evidence will help ensure that other taxing entities are not adversely affected to the degree they are currently.

The definition would sunset after two years. According to the author, this will allow the Legislature the opportunity to reevaluate the definition after a trial period.

#### 4. State Is Loser Under Current Agreement System

One of the major problems with the redevelopment process has been that counties, or other affected taxing entities, threaten to take the redevelopment agency to court to settle disputes, thus lengthening the process, unless a satisfactory "pass-through" agreement can be reached. To avoid this, agreements with opposing agencies are readily made. School districts have no incentive to make such agreements, since state school apportionment formulas keep districts "whole" regardless of any loss of property tax revenue in the district. Thus, indirectly, the state can be the major funding source of redevelopment projects.

Litigation on controversial projects could increase under this bill because "pass-through" agreements would be more restricted. But the state would bear proportionately a lesser burden of funding the project.

#### 5. Agency Formation Process Can Be Stalled to Detriment of Agency and Counties

The bill attempts to halt fiscal review committees from slowing the agency formation process. This is accomplished through the more specific deadlines.

#### 6. Additional Administrative Burden

AB 203 would require an agency to send taxing entities and members of the fiscal review committee a copy of the draft environmental impact report, and for taxing entities a preliminary report that would include an assessment of the "economic" feasibility of the proposed projects. It is likely that these requirements will add to the difficulty, time and cost involved in adopting redevelopment plans and amendments. Cities and counties agree the cost and burden would not be significant.



**Exhibit B**

**REDEVELOPMENT POLICY STATEMENT**

Third Draft by League of California Cities'  
Redevelopment Task Force

1. The League believes that the fundamental purpose of redevelopment of urban areas is conservation of urban areas and halting urban deterioration in a manner consistent with (1) providing an environment for the social, economic, and psychological growth and well-being of all citizens, (2) expanding employment opportunities for jobless, underemployed, and low-income persons, and (3) expanding the supply of low and moderate-income housing. The League further believes that redevelopment is a governmental action which should be guided by the objective of improving designated areas which, for various reasons, appear incapable of significantly improving themselves within a reasonable period of time without redevelopment assistance; and that this governmental action is necessary under certain conditions and should be authorized when these conditions are present.

**Discussion:**

This purpose is consistent with existing State policy expressed in Section 33071 of the Health and Safety Code, as follows:

"The Legislature further finds and declares that a fundamental purpose of redevelopment is to expand the supply of low and moderate-income housing, to expand employment opportunities for jobless, underemployed, and low-income persons, and to provide an environment for the social, economic, and psychological growth and well-being of all citizens."

Before a redevelopment plan is approved by a governing body for a designated area, at least one of the following conditions must exist which impede that area from sound, planned and economic development:

a. Building characteristics—deteriorating or deteriorated buildings and structures which are unfit or unsafe to occupy.



b. Social characteristics—declining population and reduction of proper utilization of the area causing unemployment, crime, health hazards and other social problems.

c. Economic characteristics—prevalence of depreciating values, declining assessed valuations, impaired investments, and socio-economic maladjustment.

d. Land Ownership Characteristics—stagnant or improperly utilized areas suffering from inadequate street layout or faulty lot layout, subdivision and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

e. Natural disasters—damage caused from natural disasters, including hurricanes, earthquakes, tidal waves, storms, floods, mudslides, fires, explosions and other catastrophies, which warrant major disaster assistance, beyond other available governmental assistance, to repair damages.

The League's belief concerning the application of redevelopment to designated urban areas is also basically consistent with State policy expressed in Sections 33031-33034 State Health and Safety Code. These sections determine the characteristics of "blight", a term which was felt inappropriate for use in State redevelopment law by the League Redevelopment Task Force. The Task Force felt that "blight" is a subjective term with a decidedly negative connection which is a barrier to community understanding of redevelopment.

2. The League believes that redevelopment, including replanning, redesign, clearance, rehabilitation, reconstruction, modernization, new development, or any combination of these, of all or part of a designated redevelopment area, and the development of such residential, commercial, industrial, public, or other structures and spaces as may be appropriate or necessary to carry out the fundamental purpose of redevelopment as described above, is essential to improve or prevent deterioration of urban areas which, following object reanalysis by the local agency and public discussion, are found to be incapable of significantly improving themselves.

Discussion:

The League's belief concerning the need for redevelopment is consistent with State policy as stated in Section 33037 of the Health and Safety Code. State policy for urban redevelopment includes the following provisions:

- a. All appropriate means should be used to improve deteriorating urban areas and provide for the well being of residents of such areas.
- b. Whenever private enterprise alone is incapable of revitalizing deteriorating urban areas, it is in the public interest for government to assist and participate through the use of eminent domain, advancing or expending public funds for these purposes and providing the means to accomplish revitalization of such areas.
- c. Governmental acceptance of funding the use of public funds and the purchase of private property, to improve deteriorating urban areas and provide continuing assistance needed to strengthen these areas are in the interest of the health and welfare of the people of California and of residents of communities where these areas exist.

The League's belief concerning the need for redevelopment encompasses the State legislative emphasis upon improving deteriorated areas. In addition, the League believed that redevelopment should strengthen the ability of government to *prevent* deterioration of urban areas.

3. The League redevelopment is part of the local planning process and should be utilized to support the local and regional community development process.

Discussion:

The State Planning Act has created an inflexible planning process for local governments, thereby encouraging limited use of redevelopment. At the same time, local government must manage increasingly complex forces affecting community development, including unemployment, crime, health and other primarily human resource problems; urban deterioration and sprawling

growth; financial instability; and environmental deterioration. State planning requirements and redevelopment should support local government efforts to respond to these challenges. General plans should be broadened to embrace planning for effective utilization of human, environmental and economic resources. Local plans should provide for the use of redevelopment in a manner which supports local human resource, environmental and economic development policy. The league believes that a local policy making and planning process, encompassing all community development concerns, should be encouraged. This community development process should reflect the size and nature of individual cities in terms of both operational form of the process and planning direction resulting from the process. The primary objectives of the community development process are (1) managing urban growth and change to provide for human needs and protect the environment, while ensuring economic well-being, and (2) conserving and improving present urban areas to minimize the loss of human, capital and environmental resources.

4. The league believes that planning for redevelopment should be coordinated with and supportive of local and regional human resource policy and plans.

#### Discussion:

Improving the physical conditions of declining urban areas does not automatically remove the causes of blight and decline. Underlying causes of urban decay must also be mitigated, particularly poverty and unemployment. Local efforts to improve such human resource problems must influence redevelopment decisions. Most of the redevelopment projects undertaken in California have emphasized job-creating economic development. A total of 71 redevelopment projects have produced more than 30 million square feet of leaseable commercial space, and 28 projects have constructed or rehabilitated over 13 million square feet of industrial space.\* Inadequate housing is also a key human as well as environmental problem in deteriorating urban areas. About 28,000 housing units, the great majority of which were for other

than relocation purposes, were provided in 66 redevelopment projects.\*

The League believes, as stated in its Action Plan for the Social Responsibilities of Cities, that cities should adopt and advocate human resource policy, and that cities should employ all available means of carrying out this policy. In addition, the League's recently adopted housing policy reaffirms the policy of the League that cities should be responsible for assisting in provision of housing for low and very low income people. Redevelopment has demonstrated success in helping provide for human needs. Redevelopment should therefore be coordinated with and consistent with local human resource policy and plans.

5. The League believes that planning for redevelopment should be coordinated with and supportive of local and regional economic policy and plans.

#### Discussion:

A serious result of urban decline is loss of tax base. Declining tax revenue has obvious effects on local ability to deliver expected services. The people most likely to suffer from reductions in education, police, fire, sanitation, and other local services supported by the property tax are the poor and members of minority groups. The problems of these groups are compounded by side-effects of a declining tax base, including departure of job providing businesses, reduction in quality and availability of professional services, increasing crime, health hazards and other problems. Successful redevelopment that strengthens the tax base will improve the local economy as well as opportunities and living conditions for underprivileged people.

The League believes, however, that government should use redevelopment as a stimulant to the local economy only when private market forces appear incapable of significantly improving declining areas within a reasonable time. Community development planning should identify the role of the private sector in supporting local economy policy and plans. Government action

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\* Statistics from *Redevelopment and Tax Increment Financing*, by Ralph Andersen and Associates, 1976.

using redevelopment authority should occur where the private sector will not or cannot further local goals.

The League recognizes that, because of the State tax system, local jurisdictions must compete for tax revenues, and that redevelopment may allow one jurisdiction to achieve a competitive advantage over other jurisdictions in the search for additional tax revenue. For this reason, the Redevelopment Task Force recommends that an in-depth study be undertaken to determine the fiscal affect of redevelopment and tax increment financing on areas in the proximity of redevelopment areas.

6. The League believes that planning for redevelopment should be coordinated with and supportive of local and regional environmental quality policy and plans.

#### Discussion:

Preservation of physical and natural resources to provide a healthy, desirable environment should be of primary concern in redevelopment planning. Local land use, transportation, public facilities, open space and urban growth policies and plans can be supported or jeopardized by redevelopment activities. Local environmental policy and plans are often inadvertently isolated from a supportive relationship with other community development activities by State and Federal Environmental laws. CEQA and NEPA, with overlapping requirements, cause local government to be more concerned with sorting out and complying with legislative mandates than with comprehensive community development planning. Environmental laws should be integrated and should encourage development of supportive relationships between environmental concerns and other community development activities. As stated in the League's Action Plan for the Environmental Quality and in the League's population growth policy, environmental quality can only be maintained if all levels of government cooperate in an environmental planning process. All levels of government should adopt environmental policy and plans. State and federal environmental laws should advocate such cooperation, the State should provide the framework for local environmental planning, and local government environmental plans should be the building blocks for the intergovernmental environmental plan-

ning process. Redevelopment should be utilized as one of several tools available to local government to implement environmental quality policy and plans.

7. The League believes that redevelopment should be coordinated with and supportive of housing conservation and neighborhood preservation policies and programs, as well as policies and plans for construction of new housing.

#### Discussion:

Redevelopment was originally influenced by the Federal objective of slum clearance. Actual utilization of Federal assistance and authority provided in State law is evolving toward a conservation emphasis where efforts are made to preserve housing, public facilities, other structures and whole neighborhoods. The Federal urban renewal program was combined with several other categorical programs into Title I of the 1974 Housing and Community Development Act. The Title I program provides flexible block grants for community development to units of local government. The primary purpose of Title I is the establishment and maintenance of viable urban communities which, as Congress recognized, requires actions by all levels of government to eliminate blight, conserve and renew older urban areas and improve the living environment of lower income families. Housing conservation and neighborhood preservation have become the program focus for many block grant recipients. Further, the League's recently adopted housing policy also encourages cities to adopt housing conservation and neighborhood improvement policy and implement related programs. At the State level, legislation creating the State Housing Finance Agency also authorizes funds for housing conservation purposes, as well as new construction. In addition, the Marks-Foran Residential Rehabilitation Act of 1973 authorizes all cities and counties to sell revenue bonds and bond anticipation notes to provide financing for residential rehabilitation loans, and the State Housing Finance Agency is authorized to insure Marks-Foran bonds. With increasing resources to carry out much needed housing and neighborhood revitalization, redevelopment as a public tool to help improve urban areas impeded from sound, planned and economic development is more important than ever.



8. The League believes that local legislative bodies should serve as the policy body for redevelopment agencies. There is no need for State statutory amendments mandating this, however.

Discussion:

Public accountability and planning coordination are important to successful and effective redevelopment. Accountability and coordination are improved when locally elected officials direct redevelopment agencies. The authority to have City Councils serve as the redevelopment policy board is provided in State law, though this designation is not mandated. Most California cities with active redevelopment agencies have city councils serve as the governing body of the redevelopment agency. Only 20 of the 152 city and county redevelopment agencies have separate policy boards, and of these 20 only 2 were created after 1970.\* The trend is certainly to transfer governing authority for redevelopment to elected officials.

9. The League believes that tax increment financing authority must exist to support redevelopment.

Discussion:

Funding for redevelopment activities is hard to find. The League believes that redevelopment benefits all taxing agencies sharing property tax revenues, and that tax increment financing is a fair and practical means of sharing the cost of these benefits. The League further believes that tax increment financing is particularly justifiable as it must be used in conjunction with and under the authority of the California Community Redevelopment Law. Furthermore, with federal urban renewal categorical grants now terminated, local government must look to community development block grants which are short term in duration, uncertain for smaller cities, and required to fund the entire spectrum of community development needs. Increasing use of tax increment financing has resulted in redevelopment activity in 214 of the 229

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\* Statistics from *Redevelopment and Tax Increment Financing*, by Ralph Andersen and Associates, 1976.

redevelopment projects currently underway financed by this principal source of redevelopment.\*

9. The League believes that tax increment financing authority must exist to support redevelopment.

10. The League believes that State statutes should be amended to clarify and improve uniformity in the use of tax increment financing, as follows:\*\*

a. It is recommended that State law be amended in order to clarify the authority of a redevelopment agency to use tax increment revenue for funding, planning, preparation and implementation of an approved redevelopment plan.

#### Discussion:

Tax increment revenue is used by a redevelopment agency to repay indebtedness it has incurred in conjunction with redeveloping an area. In some cases, tax increment revenue is only used by redevelopment agencies to repay bonded debt. In other cases, agencies assume that all planning and administrative costs are reimbursable, and some also include expenditures for ongoing services within the area. County personnel are not sure what to accept when an agency indicates that it has incurred indebtedness related to redevelopment activities, redevelopment agency personnel are not sure what to include when asked to report on the nature of indebtedness, and both agree more definite guidelines would be helpful.

The Redevelopment Task Force agreed that a significant consideration in the use of tax increment financing is the savings on interest charges that will accrue if redevelopment plans are implemented without the use of bond financing.

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\* Statistics from *Redevelopment and Tax Increment Financing*, by Ralph Andersen and Associates, 1976.

\*\* Individual recommendations were made with consideration of recommendations regarding statutory changes presented in *Redevelopment and Tax Increment Financing*, by Ralph Andersen and Associates, 1976.



b. It is recommended that State law be amended to require each redevelopment agency to annually file a uniform statement of indebtedness with the State Controller, county auditor and all local taxing agencies within the project area, and to annually report data about the nature of local redevelopment activity for purposes of on-going legislative consideration of the use of redevelopment and tax increment financing.

Discussion:

Currently, redevelopment agencies must file an annual report of indebtedness with the State Controller. In addition, some counties require an annual statement as proof of indebtedness. However, other counties transmit tax increment revenue automatically to redevelopment agencies without requiring any information regarding project indebtedness. The statements vary from county to county and, because of the complexity of the subject, it is not always clear to the county official what information to ask for or why it is important. Similarly, information on indebtedness available to local taxing agencies within a redevelopment project area varies from county to county.

Information on the nature and magnitude of indebtedness is important in order to be able to analyze the impact of tax increment financing in the future, as well as to compare data on a county by county basis. This recommendation assumes that reporting of indebtedness would be done within a common time frame by all redevelopment agencies, that a uniform reporting format would be used, and that the State Controller, county auditor and local taxing agencies within redevelopment areas would receive the reports.

There will certainly be continuing interest in evaluating the impact of existing and potential uses of redevelopment and tax increment financing by local government. Essential data for this purpose should be periodically provided by redevelopment agencies and should be used by the State Legislature for ongoing evaluation of redevelopment and tax increment financing. The Legislature should direct the State, with input from local officials, to institute a system of obtaining pertinent information from all redevelopment projects.

c. It is recommended that State law be amended to clarify that no agency shall receive tax revenue until indebtedness has actually been incurred, unless a clear plan for using these funds is included in the redevelopment plan.

Discussion:

Consistent with the theory of tax increment financing, in those project areas where issuance of tax increment bonding is to be used, property tax revenue from within the project area should continue to pass through to all local taxing agencies until there is indebtedness to repay. In those projects—usually small in nature—where “pay as you go” financing is contemplated, revenues from the project area may be generated at an earlier time provided there is a clear commitment to expend those funds in the project area on planned redevelopment activities within a reasonable time of their accrual as provided in the redevelopment plan. In addition, the redevelopment plan should disclose the expected amount of project indebtedness, and variations from this indebtedness level should be explained.

11. The League believes that State statutes should be amended to guarantee analysis of redevelopment projects supported by tax increment financing and full disclosure of information to local taxing agencies and others affected by redevelopment funded by tax increment financing as follows:\*

a. It is recommended that State law be amended in order that the preliminary redevelopment plan be transmitted to officials of affected local taxing agencies.

Discussion:

Currently, a redevelopment agency is required to notify county tax officials that a redevelopment plan is being prepared following preparation of a preliminary plan by the local planning commission and submission of this plan to the redevelopment agency. The purpose of this recommendation is to add to the existing

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\* Recommendations were made with consideration of recommendations regarding statutory changes presented in *Redevelopment and Tax Increment Financing*, by Ralph Andersen and Associates, 1976.

notification requirement that county tax officials and officials of affected local taxing agencies have an early indication of what is being considered by receiving a copy of the preliminary redevelopment plan. The preliminary plan should be viewed as the best available estimates of expected redevelopment activity. The League believes that an assessment of the fiscal impact of a redevelopment project on local taxing agencies would be a useful addition to the preliminary plan.

b. It is recommended that State law be amended to require the redevelopment plan and report, as referenced in Section 33352 of the Health and Safety Code, to be distributed to all affected local taxing agencies and that the redevelopment agency consult with officials of local taxing agencies no less than 30 days in advance of the public hearing on adoption of the redevelopment plan.

#### Discussion:

This recommendation is intended to provide local taxing agencies with more understanding of the impact of a redevelopment project supported by tax increment financing, and more opportunity to have input into the establishment of a redevelopment project area. Transmittal of the redevelopment plan and report, including an assessment of the fiscal impact of the redevelopment project on local taxing agencies, to local taxing agencies would assure availability of complete factual information. The requirement that the redevelopment plan can not be adopted by the legislative body until 30 days after the redevelopment agency consults with local taxing agencies will assure the opportunity for their participation, as well as greater visibility for the redevelopment proposal. The League believes the same procedure should be followed concerning proposed amendments to an adopted redevelopment plan.

c. It is recommended that State law be amended to require redevelopment agencies to estimate the cost of projects at the time they submit a proposed redevelopment plan to the legislative body for consideration.

Discussion:

Additional fiscal information should be included in the redevelopment plan and report presented to the legislative body for consideration. Information on the cost of proposed projects and expected amount of project indebtedness is important to better understand their magnitude in terms of political, planning and financial impact consideration.

12. The League believes that statutory changes concerning the purpose and use of redevelopment and tax increment financing authority, as suggested throughout this policy statement, is the important step in further improving the use of redevelopment and tax increment financing by local government, and that requiring review of proposed redevelopment projects by State agencies would complicate and detract from effective use of redevelopment.

Discussion:

The League believes redevelopment decisions should be made by local government, within the framework of State statutes. However, State agencies can significantly improve local redevelopment efforts. The Department of Housing and Community Development can provide valuable technical assistance and information to local governments interested in improving urban areas impeded by sound, planned and economic development. The Office of Planning and Research can significantly improve the local community development process and therefore planning for the use of redevelopment by adopting, clarifying and coordinating implementation of State development policies and plans.

13. The League believes that several specific amendments in State redevelopment statutes currently being proposed to purportedly improve redevelopment would significantly detract from the effective use of redevelopment and tax increment financing authority. After extensive consideration of the issues, the League must express strong and aggressive opposition to proposed statutory changes as follows:

a. The League opposes referendum coverage for redevelopment activities.

## Discussion:

State law provides for a referendum on the formation of a redevelopment agency. The League believes that decisions regarding specific redevelopment activities, including adoption of a redevelopment plan, should be made by elected officials, and that a popular vote on such decisions would excessively constrain the effective use of redevelopment as an essential tool in the local community development process.

b. The League opposes establishment of a fiscal review committee composed of officials of taxing agencies affected by a redevelopment project funded by tax increment financing for purposes of affecting distribution of tax increment revenue.

## Discussion:

The League believes that a fiscal review committee is contrary to the tax increment finance process where redevelopment is determined to be the highest and best use of tax resources by the local legislative body, and that such a committee would by-pass the purpose of the representative form of government. A fiscal review committee would also be contrary to the general spirit as well as specific sections of the League's redevelopment policy.

c. The League opposes application of an inflationary index to redevelopment projects funded by tax increment financing.

## Discussion:

The League believes that the cost of redevelopment will inflate at a similar rate to the general rate of inflation, and that tax increment revenue resulting from inflation is necessary to meet those costs. In addition, the League believes an equitable index would be impossible to establish.

d. The League opposes establishment of uniform time limitations for redevelopment projects.

Discussion:

The League believes that the expected duration of redevelopment projects should be included in redevelopment plans. This determination should be made at the local level. The State should not set arbitrary time limitations which may prove neither practical nor realistic.

**Exhibit C**

City of San Jose Redevelopment Agency  
801 N. First Street, San Jose, California 95110  
(408) 277-4766

Dear Property Owner, Tenant,  
or Business Person:

The Joint Public Hearing to consider amendments to the Pueblo Uno Redevelopment Plan, originally scheduled for 7 p.m., November 15, 1983, has been continued to 7:00 p.m., Tuesday, December 6, 1983, in the City Council Chambers, City Hall, located at 801 North First Street, San Jose, California.

At this Public Hearing, plan amendments concerning eminent domain and land acquisition, land uses and controls, and administrative provisions affecting plan implementation will be considered.

Written or oral testimony may be presented at this Joint Public hearing, or submitted to the Redevelopment Agency any time prior to the Public Hearing on December 6. For further information regarding the proposed amendments to the Pueblo Uno Redevelopment Plan, please contact the Redevelopment Agency offices at (408) 277-4744.

/s/ HARRY MAVROGENES  
Harry Mavrogenes  
Downtown Coordinator

**Appendix G**

Herbert F. Kaiser, Esq.  
The Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-1184

Attorney for Plaintiffs-Appellants  
David A. Boone, Stephen P. Fox and DSB-2 Investments

United States Court of Appeals  
For the Ninth Circuit  
No. 86-2506  
DC# CU-84-20772 WAI  
Northern California  
San Jose

David A. Boone and Stephen P Fox  
individually and as general partners of  
DSB-3 Group, et al.,  
Plaintiffs-Appellants,  
vs.

Redevelopment Agency of the  
City of San Jose, et al.,  
Defendants-Appellees.

**Appendix**  
**Appellants' Request to Take Judicial Notice**

PLEASE TAKE NOTICE that pursuant to Rule 201, Federal Rules of Evidence, Appellants hereby request that the Court take Judicial Notice of the following Public Documents, Records of Legislative Proceedings and Public Notices:

American Bank & Trust Building Grant Deed to Koll 10/2/84;  
Carl Swenson Building Quit Claim Deed to Koll 10/3/86;  
Foreclosure of Takamoto Building Notice of Default 9/18/86;  
Notice of Trustee Sale Takamoto Building 1/13/87;



San Jose Ordinance #21510 re 12/6/83 Amended Redevelopment Plan;

1982-1983 Budgets for 600 Car Garage at Market and Post, property which was given to Koll.

Appellants further request that the Court take Judicial Notice of Pueblo Uno Redevelopment Plan 12/6/83 Ordinance #21521, CR 130, EX B, ER 1411-1442.

With Respect to the above, Appellants attach hereto what the undersigned counsel certifies to be true and correct copies.

Dated: March 20, 1987

/s/ HERBERT J. KAISER  
Attorney for Plaintiffs-  
Appellants

Escrow or Loan No. 906971-07

Recording Requested by  
Santa Clara Land Title Company

When Recorded Mail to:  
The Koll Company  
KOLL AMERICAN BANK ASSOCIATES  
1651 North First Street  
San Jose, California 96112

**FILOR REQUEST STAMPS NOT BE RECORDED**

Signature of Declarant or Agent  
determining time—Firm Name

**Corporation Grant Deed**

FOR A VALUE CONSIDERATION, receipt of which is hereby acknowledged.

GREEN VALLEY CORPORATION, a California corporation, hereby GRANT(S) to Koll American Bank Associates, a California General Partnership, the real property in the City of San Jose, County of Santa Clara.

See "Exhibit A" attached hereto and made a part hereof for legal description.

Dated October 1, 1984.

State of California.

On October 1, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared C. B. Swenson.

/ss/ LORRAINE LARSON  
Lorraine Larson  
Name (Typed or Printed)

GREEN VALLEY CORPORATION, a California Corporation.

[Seal]

[Legal Description has been removed in printing]

Recording Requested by:

First American Title Guaranty Company  
Escrow No. 502371

When Recorded Mail to:

KA 95 South Market Associates  
c/o The Koll Company  
1731 Technology Avenue, Suite 300  
San Jose, California 95110  
Attn: Ms. Jane F. Vaughan

Mail Tax Statements to:  
Same as Above

Filed for Record at Request of  
Oct 3 2 21 PM '86  
Official Records  
Santa Clara County  
Laurie Kane, Recorder  
J870Page1631

Apr2 § 9.40-84

(Above Space for Recorder's Use Only)

Quitclaim Deed

The undersigned grantor declares:

Documentary Transfer Tax not shown pursuant to Section  
11932 of the Revenue and Taxation Code and  
, as amended

City of San Jose

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation ("Grantor"), hereby remises, releases and quitclaims all its right, title and interest in and to the following described real property located in the City of San Jose, County of Santa Clara, State of California to KA 95 SOUTH MARKET ASSOCIATES, A CALIFORNIA GENERAL PARTNERSHIP:

See Exhibit "A" attached hereto and incorporated herein by this reference.

The quitclaim herein is intended to include but is not limited to the undersigned's interest in, under and to that certain Ground Lease dated July 24, 1974, more particularly described in a Memorandum of Ground Lease recorded in Book C398, Page 697 of the official records ("Official Records") of the Santa Clara County Recorder's office, including any amendments or addenda thereto; provided, however, that the interest of Grantor in such property by reason of that certain Deed of Trust dated December 19, 1978, recorded December 20, 1978, in Book E176, Page 661 of Official Records, as the same may be modified from time to time, is specifically excluded from the quitclaim hereunder.

DATED: September 10, 1986

The Northwestern Mutual Life Insurance Company, a Wisconsin corporation

By /s/ GLENN W. BUZZARD  
Its Vice President,  
Glenn W. Buzzard

By /s/ MARVIN A. HANSEN  
Its Ass't Secretary,  
Marvin A. Hansen

[Legal Description removed in printing]

Recording Requested by  
T. D. Service Company  
and when recorded mail to

T. D. Service Company  
1990 North California Blvd.  
Suite 716  
Walnut Creek, Ca 94596-3787

Filed for Record at Request of  
T. D. Service Co.  
Sep 18 1 54 PM '86  
Official Records  
Santa Clara County  
Laurie Kane, Recorder  
J850 Page 566

Notice of Default and Election to Sell Under Deed of Trust  
Loan No. 40076-02-55/Market St. Centre  
T.S. No. Z63684  
Unit Code Z

**"Important Notice"**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$149,757.07 as of September 30, 1986 and will increase until your account becomes current. You may not have to pay the entire unpaid portion of your account even though full payment was demanded, but you must pay the amount stated above. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is

posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Debra Stone  
Gateway Savings Bank  
393 13th Street  
Oakland, CA 94612  
415-874-4945

If you have any questions, you should contact a lawyer or the government agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

In addition to the amount stated above, should any prior taxes, liens, or encumbrances be delinquent or become delinquent, and the loan can be reinstated, said delinquencies must be cured as a condition of reinstatement.

NOTICE OF DEFAULT AND ELECTION TO SELL  
UNDER DEED OF TRUST

Loan No. 40076-02-55/MARKET ST. CENTRE  
T.S. No. Z63684  
UNIT CODE: Z

NOTICE IS HEREBY GIVEN: THAT T.D. SERVICE COMPANY is duly appointed Trustee under the following described deed of trust:

TRUSTOR: THE MARKET STREET CENTRE PARTNERS

BENEFICIARY: GATEWAY SAVINGS BANK

record March 25, 1985 as Instr. NO. 8359915 In Book J 300 page 1366 of Official Records in the office of the Recorder of Santa Clara County;

said deed of trust secures certain obligations including one note for the sum of \$3,100,000.00

That the beneficial interest under such deed of trust and the obligations secured thereby are presently held by the undersigned; That a breach of, and default in, the obligations for which such deed of trust is security has occurred in that payment has not been made of:

The installment of principal and interest which became due June 15, 1986, and all subsequent installments of principal and interest. All late charges due. The sum of \$972.86, advanced by the Beneficiary in payment of the May 15, 1986 payment (taken from escrow).

In addition to the default stated above, should any prior taxes, liens or encumbrances be delinquent or become delinquent, or should the Beneficiary advance sums to protect their security, said delinquencies must be cured as a condition of reinstatement or payoff.

That by reason thereof, the undersigned, present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for sale, and has deposited with said duly appointed Trustee, such

A-138

deed of trust and all documents evidencing obligation secured thereby, and has declared and does hereby declare all sums thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED: September 17, 1986

GATEWAY SAVINGS BANK  
By T.D. SERVICE COMPANY,  
Its Attorney-in-Fact

BY: JUNE CHRISTY  
June Christy, Assistant Secretary



Recording Requested by  
T.D. Service Company  
and when recorded mail to  
T.D. Service Company  
1990 North California Blvd.  
Suite 716  
Walnut Creek, CA 94596-3787  
(415) 944-9015

Filed for Record at Request of  
T.D. Service Co.  
Jan 13 3:01 PM '87  
Official Records  
Santa Clara County  
Laurie Kane, Recorder

Notice of Trustee's Sale

Loan No. 40076-02-55/Market St. Centre  
T.S. No. Z63684  
Unit Code Z

T.D. Service Company

as duly appointed Trustee under the following described deed of trust WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH (in the forms which are lawful tender in the United States) and/or the cashier's, certified or other checks specified in the Civil Code (Payable in full at the time of sale) all right, title and interest conveyed to and now held by it under said Deed of Trust in the property hereinafter described:

Trustor:

The Market Street Centre Partners

Beneficiary: Gateway Savings Bank

recorded March 25, 1985 as Instr. No. 8359915 In Book J 300  
page 1386 of Official Records in the office of the Recorder of  
Santa Clara County;

said deed of trust describes the following property: SEE ATTACHED EXHIBIT

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/21/85. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

80 SOUTH MARKET STREET, SAN JOSE, CA "(if a street address or common designation of property is shown above, no warranty is given as to its completeness or correctness)." The beneficiary under said Deed of Trust, by reason of a breach or default in the obligations secured thereby, heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and written notice of default and of election to cause the undersigned to sell said property to satisfy said obligations, and thereafter the undersigned caused said notice of default and of election to be recorded September 18, 1986 as Instr. No. 8950880 In Book J850 page 566 of Official Records in the office of the Recorder of Santa Clara County;

Said Sale will be made, but without covenant or warranty, express or implied, regarding title possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said deed of Trust, with interest as in said note provided, advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. Said sale will be held on:

Wednesday, February 11, 1987, at 1:00 p.m. at the front entrance to the County Courthouse, 190 N. Market St., San Jose CA.

At the time of the initial publication of this notice, the total amount of the unpaid balance of the obligation secured by the above described deed of trust and estimated costs, expenses, and advances is \$3,384,036.44. It is possible that at the time of sale the opening bid may be less than the total indebtedness due. If available, the expected opening bid may be obtained by calling the following telephone numbers on the day before the sale: (415) 945-6418.

Date: January 6, 1987

T.D. Service Company  
as said Trustee,

By \_\_\_\_\_  
Kayo Minson-Tompkins, Assistant  
Secretary  
1990 N. California Blvd.  
Ste. 716,  
Walnut Creek, CA 94596-3787  
(415) 944-9015

**PARCEL ONE:**

Portion of Lots 10 and 11, in Block 1 Range 1 North, as shown upon that certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Volume "A" of Maps, at pages 72 and 73, and more particularly described as follows:

BEGINNING at a point on the Northeasterly line of South Market Street, distant Northwesterly thereon 137.84 feet from its intersection with the Northwesterly line of San Fernando Street, said point of beginning being also the most Southerly corner of Lot 10, in Block 1, as shown upon the above Map; running thence Northeasterly along the Southeasterly line of Lot 10, and continuing along the Southeasterly line of Lot 11, said Block 1, 206.75 feet to the most Southerly corner of the property now or formerly of Messing Estate Company, a corporation, running thence Northwesterly and along the Southwesterly line of the property described as Parcel 5 in that certain Decree of Distribution entered June 25, 1934 in the Matter of the Estate of Peter H. Stock, Deceased, a certified copy of which Decree was recorded June 25, 1934 in Volume 694 of Official Records, page 140, for a distance of 52 feet to the most Easterly corner of that certain Parcel of land conveyed to First National Bank of San Jose, a corporation, by Trustee's Deed dated May 10, 1933 and recorded May 11, 1933 in Volume 650 of Official Records, at page 213, running thence Southwesterly and along the Southeasterly line of the property so conveyed to the First National Bank of San Jose, 206.75 feet to the Northeasterly line of South Market Street; thence Southeasterly along said Northeasterly line of South Market Street, 52 feet to the point of beginning.

**PARCEL TWO:**

PORTION of lots 10 and 11 in Block 1 Range 1 North, as shown upon that certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book A of Maps, at pages 72 and 73, and more particularly described as follows:

BEGINNING at a point on the Northeasterly line of Market Street, distant thereon Northwesterly 52 feet from its intersection with the Southeasterly line of Lot 10 in Block 1 Range 1 North, as shown upon the Map above referred to; running thence Northeasterly at right angles to said Northeastern line of Market Street and parallel with the Southeastern line of Lots 10 and 11 in Block 1 Range 1 North above referred to, 206.75 feet to the face of a brick wall; thence at right angles Northwesterly along the face of said brick wall and parallel with the said Northeastern line of Market Street 19 feet; thence at right angles Southwesterly 30 feet; thence at right angles Southeasterly and parallel with the said Northeastern line of Market Street 12 feet and 6 inches; thence at right angles Southwesterly and parallel with the Southeastern line of Lots 10 and 11 in Block 1 Range 1 North above referred to, 176.75 feet to the said Northeastern line of Market Street, thence Southeasterly along the Northeastern line of Market Street, 6 feet 6 inches to the point of beginning.

Ordinance No. 2510

Ordinance of the City of San Jose Approving and Adopting an Amendment to the Redevelopment Plan Entitled, "Second Amended Redevelopment Plan Pueblo Uno Project"; Addressing Findings and Determinations Respecting Certain Matters as Required by Law; and Otherwise Relating to Said Redevelopment Plan and Amendment

Recorded January 20, 1984  
Santa Clara County Recorder  
Serial # 7953712; Book I246;  
Pages 98-100

THE CITY COUNCIL OF THE CITY OF SAN JOSE  
DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council, after a public hearing held at 7:00 p.m., on December 6, 1983 makes the following findings of fact:

A. This Council by its Ordinances No. 17778, 20677 and 21417 has heretofore adopted a Redevelopment Plan entitled, "Second Amended Redevelopment Plan Pueblo Uno Project, as the official Redevelopment Plan for the Pueblo Uno Project area; and

B. Pursuant to the Community Redevelopment Law of the State of California, (Health and Safety Code, Sections 33000, et seq.) the Redevelopment Agency of the City of San Jose has submitted to this Council for consideration a Third Amendment to said Redevelopment Plan; and

C. The proposed amendment includes administrative and project plan implementation amendments to the Redevelopment Plan attached hereto and incorporated herein by this reference; and

D. The proposed amendment does not affect the General Plan within the meaning of the Community Redevelopment Law; and

E. Said Community Redevelopment Law requires that this Council consider said Third Amendment to said Redevelopment

Plan at a public hearing and allows a joint public hearing with said Redevelopment Agency; and

F. This Council and said Agency did cause notice to be published in form and substance and within the time and manner prescribed by said Community Redevelopment Law, that said Redevelopment Agency and this Council would conduct a joint public hearing on said Third Amendment to the Redevelopment Plan at the hour of 7:00 p.m. on the 6th day of December, 1983, in the City Council of City Hall of the City of San Jose, First and Mission Streets, San Jose, California; and

G. At said hearing this Council did consider said Third Amendment to said Redevelopment Plan and all evidence or testimony regarding the content thereof and all evidence or testimony for or against the adoption thereof and any and all changes thereto; and

H. Said hearing did comply in all respects with said Community Redevelopment Law and was conducted in accordance with and as required by the laws of the State of California pertaining to such hearing;

I. The Third Amendment to the Redevelopment Plan for Pueblo Uno Project area is necessary and desirable in order to carry out the redevelopment plan for the Project area.

J. The proposed method of financing the project as amended has been previously submitted to and approved by the Agency Board and City Council as part of the 1983-84 Capital Improvement Program for the Pueblo Uno Project Area.

K. The condemnation of real property in the Project Area is necessary for the execution of the Redevelopment Plan.

L. The Agency has a feasible method or plan for the relocation of families and persons displaced from the Project Area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the Project Area.

M. There are or are being provided in the public utilities and public and commercial facilities and at rents or prices within the

financial means of the families and persons displaced from the Project Area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment.

Section 2. This Council has considered all objections to the proposed Amended Redevelopment Plan and the evidence presented to the proposed Amended Redevelopment Plan and the evidence presented by the Redevelopment Agency, and hereby overrules such objections as not supported by the evidence presented.

Section 3. The plan entitled, "Third Amended Redevelopment Plan Pueblo Uno Project" is hereby approved and adopted, is hereby designated as the official Redevelopment Plan for the Pueblo Uno Project area and shall supercede the Redevelopment Plan approved, adopted and amended in prior ordinances to the extent provided hereinafter. Said Third Amended Redevelopment Plan is on file in the office of the City Clerk and the Redevelopment Agency of the City of San Jose, and said Third Amended Redevelopment Plan by this reference is incorporated herein and made a part hereof. All references to said Redevelopment Plan in previous ordinances adopting or modifying the Plan shall be taken to mean the Plan as it has been amended, unless the context otherwise requires.

Section 4. This ordinance shall become effective immediately upon adoption after publication of title.



A-147

PASSED FOR PUBLICATION OF TITLE this 6th day of  
December, 1983, by the following vote:

Ayes: Alvarado, Beall, Estruth, Fletcher, Hammer, Ianni,  
Lewis, Ryden, Sausedo, Williams

Noes: None

Absent: None

Abstain: McEnery

/s/ THOMAS McENERY  
Thomas McEnery, Mayor

Attest:

/s/ HELEN E. JACKSON  
Helen E. Jackson, City Clerk

## RESOURCES

Merged Area Redevelopment Capital Improvement  
Fund—Pueblo Uno Account #451:

Beginning Fund Balance .....	\$ 29,000
Interest Income .....	200,000
Payments from Redevelopment Agency .....	<u>5,471,000</u>
Total Resources .....	\$5,700,000

## Use of Funds

Project	Cost
1. Market and Post Street Garage	
Construction of a 600 space parking garage on existing city surface parking lot #5, with retail below and offices above constructed by the developers	Construction \$5,000,000 Eng.-Insp. <u>700,000</u> <u>\$5,700,000</u>
Project included in 1982-87 Five- Year Capital Improvement Program, Project #1. Award of contract dependent upon developer commitments.	
Total Use of Funds	<u><u>\$5,700,000</u></u>

**Appendix H**

[Letterhead]

November 17, 1987

United States Court of Appeals for the Ninth Circuit  
Post Office Building  
7th and Mission Streets  
P.O. Box 547  
San Francisco, CA 94101

Re: Boone, et al. v. Redevelopment Agency of the City of  
San Jose, et al., Case No. 86-2506; DC CV-84-20772-WAI

To the Honorable Court:

Pursuant to the Court Order dated September 30, 1987 appellants submit original and three copies of the District Court Order pursuant to Rule 54(b) dated November 13, 1987, certifying that there is no just reason for delaying the appeal and decision thereon.

Appellants request that the Court take judicial notice pursuant to Rule 201(f) Federal Rules of Evidence and the subsequent developments since oral argument on May 12, 1987, that are of public record and relevant to the appeal, to wit:

- Exhibit 1. A copy of the Notice of Default and foreclosure proceedings on appellants Market/Post office building;
- Exhibit 2. A copy of appellants Petition in Bankruptcy under Chapter 11;
- Exhibit 3. A copy of the completion of foreclosure proceedings against the Takomoto Building in the project area previously referred to in Appellants Reply Brief, page 1, line 16.

Respectfully submitted,

/s/ HERBERT F. KAISER  
Herbert F. Kaiser

Enclosures

cc: James Gilliland, Esq.  
Gary B. Reiners, Esq.  
Joseph Diciuccio, Esq.  
David T. Alexander, Esq.

**Exhibit 1**

**Notice of Default and Election to Sell Under Deed of Trust  
Important Notice**

Notice is Hereby Given: That Verdugo Service Corporation is now duly appointed Trustee under a Deed of Trust dated 02/11/86 executed by: Market/Post Ltd., a California Limited Partnership as Trustor, to secure obligations in favor of: Glendale Federal Savings and Loan Association, a United States Corporation as Beneficiary Recorded on 03/10/86 as document no. 8713656, book J625, page 70, of Official Records in the office of the Recorder of Santa Clara County, California describing the land therein: as more fully described on said Deed of Trust.

Including 1 note(s) for the sum of \$42,150,000.00 that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the beneficiary. That a breach of and default in, the obligation for which said Deed of Trust is security has occurred in that the payment in that the payment has not been made of: The 03/01/87 payment of principal and/or interest and subsequent payments, together with late charges, impounds, advances, taxes, delinquent payments on senior liens, or assessments if any.

That by reason \_\_\_\_\_, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby, immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATE: 07/06/87

Glendale Federal Savings & Loan  
Association

W.J. McMILLAN  
W.J. McMillan, Vice-President

L.W. McMAHON  
L.W. McMahon, Asst. Vice-President

**NOTICE OF DEFAULT AND ELECTION TO SELL**

Exhibit 2

Campeau & Grube  
Attorney for Petitioner  
55 S. Market St, #1040  
San Jose, CA 95113  
(408) 295-9555

Miller & Gianini  
84 W. Santa Clara St, #800  
San Jose, CA 95113  
(408) 294-9046

United States Bankruptcy Court  
for the Northern District of California

Case No. 587 04067

In re Market/Post Ltd.,  
a California Limited Partnership, Debtor

Set forth all names including trade names used by Debtor  
within the last six years.

Social Security No.

Debtor's Employer Identification No.

Voluntary Petition Under Chapter Eleven

- ☐ Individual   ☐ Husband and Wife  
☐ Corporation   ☒ Partnership

1. Petitioner's mailing address, including county, is 55 South Market Street, Suite 1000 San Jose, CA 95113 (County of Santa Clara).

2. Petitioner (1) has had its principal place of business within this district (2) for the preceding 180 days.

3. Petitioners are qualified to file this petition and are entitled to the benefits of Title Eleven, United States Code as a voluntary debtor.

4. *If petitioner is an individual whose debts are primarily consumer debts.* Petitioner is aware that they may proceed under

Chapter 7 or 13 of Title 11, United States Code, understands the relief available under such chapter, and chooses to proceed under Chapter 11 of such title.

5. *If petitioner is an individual whose debts are primarily consumer debts and such petitioner is represented by an attorney,* A declaration or an affidavit in the form of Exhibit B is attached to and made a part of this petition.

7. ☐ A copy of petitioner's proposed plan dated the \_\_\_\_\_ is attached.

☒ Petitioner intends to file a plan pursuant to Chapter Eleven of Title Eleven, United States Code.

Wherefore, Petitioner prays for relief in accordance with Chapter Eleven, United States Code.

Petitioner signs if not represented by an  
attorney

---

Petitioner

---

Attorney for Petitioner

55 South Market St., Suite 1040  
San Jose, CA 95113

- 
- (1) Insert "has resided" or "has had his domicile" or "has had his principal place of business" or "has had his principal assets within this district."
- (2) Insert "for the preceding 180 days" or "for a longer portion of the preceding 180 days in any other district."

**Exhibit 3**

\_\_\_\_ Recording Requested by  
T.D. Service Company

**AND WHEN RECORDED MAIL TO**  
Gateway Savings Bank  
393 13th Street Oakland, CA 94612

Filed for record at request of  
T.D. Service Co.  
Oct. 9 12:27 pm '87

Official records Santa Clara County

Laurie Kane, Recorder

\_\_\_\_ Space Above This Line For Recorders Use  
K320 Page 1191

The undersigned declares under penalty of perjury that the following declaration is true and correct:

- 1) The grantee herein was the foreclosing beneficiary
- 2) The amount of the unpaid debt together with costs was . . \$3,651,389.70
- 3) The amount paid by the grantee at the trustee's sale was \$3,651,389.70
- 4) The documentary transfer tax is . . . . . \$ 0.00
- 5) The city transfer tax is . . . . . \$ 0.00
- 6) Said property is in the City of San Jose, County of Santa Clara

AP# 259 40 067

T.D. Service Company

Dated October 7, 1987

By \_\_\_\_\_  
KAYO MANSON-TOMPKINS, ASST. SECRETARY

**TRUSTEE'S DEED UPON SALE**

Loan No. 40076-02-55/Market St. Centre  
T.S. No. Z63684  
UNIT CODE Z

**THE GRANTEE IS THE FORCLOSING BENEFICIARY  
UNDER A FIRST DEED OF TRUST**

This Indenture is made with reference to the Deed of Trust hereinafter described and is made between

**T.D. SERVICE COMPANY**

(herein called Trustee), and the Grantee hereinafter named.

TRUSTOR:

THE MARKET STREET CENTRE PARTNERS  
BENEFICIARY: GATEWAY SAVINGS BANK

recorded March 25, 1985 as Instr. No. 8359915 in Book J 300  
page 1386 of Official Records in the office  
of the Recorder of Santa Clara County:

said deed of trust describes the following property:

SEE ATTACHED EXHIBIT

Whereas, the above named trustor did, by the trust deed referred to above, grant and convey to the trustee named therein, the property heretofore described to secure, among other obligations, payment of a note or notes with interest according to the terms thereof and Whereas, the holder of said note did execute and deliver to trustee written declaration of default and demand for sale and notice of default and election to cause the undersigned to sell said property which notice was recorded September 18, 1986 as Instr. No. 8950880 in Book J850 page 566 of Official Records in the office of the Recorder of Santa Clara County;

Thereafter, a notice of trustee's sale, stating that said trustee would sell the above described property at public auction to the highest bidder for cash on February 11, 1987, at 1:00 p.m. at the front entrance to the County Courthouse, 190 N. Market St., San Jose, CA at which time and place, and thereafter in like manner, said Sale was postponed by (Mesne) public announcement to October 7, 1987, at the same time and place.

PARCEL ONE:

Portion of Lots 10 and 11, in Block 1 Range 1 North, as shown upon the certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Volume "A" of Maps, at pages 72 and 73, and more particularly described as follows:

BEGINNING at a point on the Northeasterly line of South Market Street, distant Northwesterly thereof 137.84 feet from its



intersection with the Northwesterly line of San Fernando Street, said point of beginning being also the most Southerly corner of Lot 10, in Block 1, as shown upon the above Map; running thence Northeasterly along the Southeasterly line of said Lot 10, and continuing along the Southeasterly line of Lot 11, said Block 1, 206.75 feet to the most Southerly corner of the property now or formerly of Messing Estate Company, a corporation, running thence Northwesterly and along the Southwesterly line of the property described as Parcel 5 in that certain Decree of Distribution entered June 25, 1934 in the Matter of the Estate of Peter H. Stock, Deceased, a certified copy of which Decree was recorded June 25, 1934 in Volume 694 of Official Records, page 140, for a distance of 52 feet to the most Easterly corner of that certain Parcel of land conveyed to First National Bank of San Jose, a corporation, by Trustee's Deed dated May 10, 1933 and recorded May 11, 1933 in Volume 650 of Official Records, at page 213, running thence Southwesterly and along the Southeasterly line of the property so conveyed to the First National Bank of San Jose, 206.75 feet to the Northeasterly line of South Market Street; thence Southeasterly along said Northeasterly line of South Market Street, 52 feet to the point of beginning.

#### PARCEL TWO:

PORTION of Lots 10 and 11 in Block 1 Range 1 North, as shown upon that certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book A of Maps, at pages 72 and 73, and more particularly described as follows:

BEGINNING at a point on the Northeasterly line of Market Street, distant thereon Northwesterly 52 feet from its intersection with the Southeastern line of Lot 10 in Block 1, Range 1 North, as shown upon the Map above referred to; running thence Northeasterly at right angles to said Northeastern line of Market Street and parallel with the Southeastern line of Lots 10 and 11 in Block 1 Range 1 North above referred to, 206.75 feet to the face of a brick wall; thence at right angles Northwesterly along the face of said brick wall and parallel with the said Northeastern line of Market Street 19 feet; thence at right angles Southwesterly 30

feet; thence at right angles Southeasterly and parallel with the said Northeastern line of Market Street 12 feet and 6 inches; thence at right angles Southwesterly and parallel with the Southeastern line of Lots 10 and 11 in Block 1 Range 1 North above referred to, 176.75 feet to the said Northeastern line of Market Street, thence Southeasterly along the Northeastern line of Market Street, 6 feet 6 inches to the point of beginning.

said notice was posted for not less than twenty days before the date of sale there fixed, as follows: in one public place in the said city of San Jose

wherein said property was to be sold, to wit: on a bulletin board

INSIDE THE COUNTY COURTHOUSE, 190 N. MARKET STREET, SAN JOSE, CA

and also in a conspicuous place on said property to be sold; and said Trustee did cause a copy of said Notice to be published once a week for twenty days before the date of sale therein fixed in

#### SAN JOSE POST-RECORD

a newspaper of general circulation printed and published in the city or district in which said real property is situated, the first date of such publication being January 21, 1987; and

Said notice was also recorded at least 14 days prior to the sale in the office of the county recorder of the county in which the property heretofore described is located.

Whereas, copies of said recorded Notice of Default and of said Notice of Sale were mailed, served or published in accordance with Section 2924b of the Civil Code to or upon all those who were entitled to special notice of said sale as in said section provided; and

Whereas, all applicable statutory provisions of the State of California and all of the provisions of said Deed of Trust have been complied with as to acts to be performed and notices to be given; and

Whereas, Trustee did at the time and place of sale fixed as aforesaid, then and there sell, at public auction, to said Grantee, being the highest bidder therefor, the property hereinafter de-

scribed, for the sum of \$3,651,389.70 by the satisfaction of the indebtedness then secured by said Deed of Trust.

Now, therefore, Trustee in consideration of the premises recited and of the sum above mentioned bid and paid by Grantee, the receipt whereof is hereby acknowledged, and by virtue of the authority vested in it by said Deed of Trust, does, by these presents GRANT AND CONVEY without any covenant or warranty, express or implied all that certain property hereinbefore described, to

GATEWAY SAVINGS BANK

In Witness Whereof, the undersigned caused its corporate name and seal to be hereunto affixed

Dated October 8, 1987

T.D. SERVICE COMPANY

KAREN MERKEL

Karen Merkel, Asst. Vice President

KAYO MARSON-TOMPKINS

Kayo Marson-Tompkins,  
Asst. Secretary

STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

On October 8, 1987 before me, the undersigned, a Notary Public in and for said State personally appeared KAREN MERKEL, known to me to be the Asst. Vice President, and KAYO MANSON-TOMPKINS, known to me to be the Asst. Secretary of the Corporation that executed the within instrument, known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument, on behalf of the Corporation therein named, and acknowledged to be such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

TRACILYN MORRIS  
Tracilyn Morris

[Seal]

**Appendix I**

Khourie & Crew  
Michael N. Khourie  
James G. Gilliland, Jr.  
Mark T. Jansen  
101 California Street, Suite 1550  
Sna Francisco, CA 94111  
Telephone: (415) 982-1550

Gary B. Rieners, Esq.  
General Counsel  
151 East Mission Street  
San Jose, CA 95110  
Telephone: (408) 277-4454

Attorneys for Defendant  
Redevelopment Agency of the  
City of San Jose

Robert J. Logan  
City Attorney  
Daniel J. Wallace  
Chief of Litigation  
151 West Mission Street  
San Jose, CA 95100  
Telephone: (408) 277-4454

Attorneys for Defendant  
City of San Jose

United States District Court  
Northern District of California

CASE NO. C-84-20772 WAI

Docket # 56

David A. Boone, and Stephen P. Fox, individually and as General Partners of DSC-3 Group, a California limited partnership, and as General Partners of Market/Post, Ltd., a California limited partnership; Dave Goglio and Donald Goglio, individually and as general partners of Three G's a California limited partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body Corporate and Politic of the State of California; City of San Jose, a Municipal Corporation and Subdivision of the State of California; the Koll Company, a California corporation,  
Defendants.

ORDER RE:  
DISCOVERY AND BRIEFING SCHEDULE  
[Filed April 25, 1985]

A discovery and scheduling conference was held in this Court on April 10, 1985. All parties appeared through their counsel of record. After consideration of the arguments of the parties and being fully advised in the premises, IT IS HEREBY ORDERED THAT:

1. Defendants have agreed to stipulate that plaintiffs may file their Amended Complaint without prejudice to any subsequent motions any defendant may wish to file regarding its rights or claims, if any, arising from plaintiffs' filing of their original Complaint or amendment of their Complaint;
2. Defendants which have not yet done so shall file motions to dismiss the Amended Complaint under Fed.R.Civ.P. 12 and supporting briefs on or before 5:00 p.m., April 22, 1985;
3. Plaintiffs shall respond to defendants' motions to dismiss on or before 5:00 p.m., May 7, 1985;
4. Defendants shall file reply briefs in support of their motions to dismiss on or before 5:00 p.m., May 14, 1985;

5. Argument of defendants' motions to dismiss the Amended Complaint shall be heard May 20, 1985;

6. Defendants' pending motions for judgment on the pleadings directed to plaintiffs' original Complaint are withdrawn;

7. No further discovery shall be undertaken until after May 20, 1985;

8. No defendant shall file any motion regarding rights or claims it alleges to have resulting from plaintiffs' filing of their original Complaint or amendment of their Complaint until after May 20, 1985; and

9. Plaintiffs shall have the statutory time to respond to any motions filed by any defendant regarding rights or claims it alleges to have as a result of plaintiffs' amendment of their Complaint.

Dated:

Approved as to form:

JAMES G. GILLILAND, JR.

James G. Gilliland, Jr.  
On behalf of defendants  
Redevelopment Agency of  
San Jose and City  
of San Jose

DAVID T. ALEXANDER

David T. Alexander  
On behalf of defendant, Koll  
Company

HERBERT F. KAISER

Herbert F. Kaiser  
On behalf of plaintiffs,  
David Boone, et al.

IT IS SO ORDERED

WILLIAM A. INGRAM

William A. Ingram  
U.S. District Judge



**Appendix J**

Herbert F. Kaiser, Esq.  
Law Offices of Herbert F. Kaiser  
Alcoa Building, Suite 1250  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

United States District Court  
Northern District of California  
CASE NO. C-84-20772 WAI  
Docket #89

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's, a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a Municipal Corporation and Subdivision of the State of  
California; Frank Taylor; the Koll Company, a California  
Corporation,  
Defendants.

Date: October 8, 1985

Time: 9:00 a.m.

Court Room: Honorable William A. Ingram

**DECLARATION OF HERBERT F. KAISER IN SUPPORT  
OF PLAINTIFFS' COUNTER-MOTION FOR ORDER  
SEVERING HEARING AND IN OPPOSITION TO MO-  
TIONS OF DEFENDANT CITY FOR RULE 11 SANC-  
TIONS AND FOR ORDER STRIKING CERTAIN  
PORTIONS OF THE SECOND AMENDED COMPLAINT**

[Filed Sept. 17, 1985]

Clerk's Record Docket No. 89

\* \* \* \*

8. After defendant Koll had filed this motion to expunge, I learned that in addition to the \$12,595 which is referred to in the Declaration of Herbert F. Kaiser in opposition to defendant City's Rule 11 motion, and which Koll, through its executives and employees, had paid to City officials, the Koll partners who were working on the Pueblo Uno project paid an additional \$15,570 to city officials. Therefore, we have discovered a total thus far of \$28,165 which Koll, its executives and partners on the Pueblo Uno project have paid to such officials, and investigation is continuing. I believe that they did this in order to accomplish their unlawful purpose. I also have discovered that city officials such as Jerry T. Estruth, who City Councilman during the relevant time periods and who voted for the Koll project, has made substantial profits from Redevelopment Agency bonds which, although sold to finance the Koll project, were not needed because private investment would have accomplished the redevelopment. I attach hereto a copy of a memorandum concerning these newly discovered facts as Exhibit E.

\* \* \* \*

### **Exhibit B**

#### **2.21.030 Contribution limitations to city council candidates.**

No person, other than the candidate in aid of himself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for city council which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed two hundred fifty dollars. Each primary, general or special election is considered separate and distinct for the purposes of this section. (Added by Ord. 20132. Amended by Ords. 20338, 20626.)

2.21.040 Contribution limitations to mayoral candidates.

No person, other than the candidate in aid of himself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for mayor which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed five hundred dollars. Each primary, general or special election is considered separate and distinct for the purposes of this section. (Added by Ord. 20132. Amended by Ords. 20338, 20626.)

\* \* \* \*

**Exhibit C**

The following people are shown on campaign statements as having made contributions to past and present members of the Council while employed with the Koll Company.

1. Drew Gibson, 119 Bryant St., Palo Alto, CA, 94301, (415) 321-5238. Listed as President, Koll Co., Executive, Developer or unknown.  
Total Dollar Amount: \$3,950.00.
2. Steven G. Speno, 101 Teresa Ct., Los Gatos, CA, 95030, (408) 356-6886. Listed as Vice President, Koll Co., Executive, Salesman or Developer.  
Total Dollar Amount: \$1,245.00.
3. William T. Benson, 13044 Cumberland, Saratoga, CA, 95070, (408) 867-7867. Listed as Vice President, Koll Co., Executive or Developer.  
Total Dollar Amount: \$1,820.00.
4. Wendy Bursdall Kurst, 835 Lathrop Dr., Stanford, CA, 94306. Listed as Vice President.  
Total Dollar Amount: \$160.00.
5. David Pogue, 1279 Bent Drive, Campbell, CA, 95008. Listed as Vice President.  
Total Dollar Amount: \$1,520.00.
6. George B. Roberts, 3795 Ralston, Hillsborough, CA, 94010. Listed as Vice President, Construction.  
Total Dollar Amount: \$1,250.00.
7. Robert A. and Eleanor Church, 1342 Robsheal Dr., San Jose, CA. Listed as Vice President, Construction—Northern Division.  
Total Dollar Amount: \$550.00.
8. Dianne Perata, 2154 Los Gatos—Almaden, San Jose, CA, 95124. Listed as Office Manager.  
Total Dollar Amount: \$500.00.
9. Michael Perata, same as Dianne Perata.  
Total Dollar Amount: \$100.00.

10. Charles Steele, 1043 Parkinson, Palo Alto, CA, 94304. Listed as Vice President.

Total Dollar Amount: \$850.00.

11. The Koll Company, 4490 Von Karman Avenue, Newport Beach, CA, 92660, (714) 833-3030.

Total Dollar Amount: \$660.00.

The following San Jose City Council members received contributions from the Koll Co. and its employees:

1. Lu Ryden, Councilwoman, District 1.  
4525 Corona Dr., San Jose, CA, 95129, (408) 446-1750.  
Occupation: Services of Spouse  
Controlled Campaign Committee: Citizens to elect Lou Ryden, address same as residence.  
Treasurer: Jerry Slade, 115 Casitas Bulevar, Los Gatos, CA, 95030, (408) 374-4409.

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
4/28/85	Mr. & Mrs. Drew Gibson	\$125.00 (Encl. A, pg 2)

2. Judy Stabile, Councilwoman, District 2.  
275 Omira Dr., San Jose, CA, 95123.  
Occupation: Services of Spouse  
Controlled Committee: Citizens for Judy Stabile, address same as residence.  
Treasurer: Judith Henderson, 1128 Olive Branch Ln., San Jose, CA, 95120.

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
10/12/84	Steve Speno	\$100.00 (Encl. B, pg 3)

## 3. Susan Hammer, District 3

1257 W. Hedding St., San Jose, CA, 95126.

Occupation: Attorney, partner in Beauzau, Hammer, Esgar, Bledso and Sprinkle, San Jose, CA.

Controlled Committee: Citizens for Susan Hammer, 615 S. 16th St., San Jose, CA.

Treasurer: Bobbie Fischler, 604 S. 15th St., San Jose, CA, 95112. (see Encl. C—18 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
4/12/82	William T. Benson	\$125.00 (Encl C, pg 3)
10/6/82	" "	75.00 (Encl C, pg 9)
6/13/83	" "	100.00 (Encl C, pg 15)
4/4/84	" "	100.00 (Encl C, pg 19)
4/12/84	Robert A. Church	125.00 (Encl C, pg 4)
10/6/82	" "	75.00 (Encl C, pg 10)
4/27/82	Drew G. Gibson	150.00 (Encl C, pg 4)
4/18/84	" "	150.00 (Encl C, pg 17)
4/26/82	David Pogue	125.00 (Encl C, pg 5)
10/6/82	" "	75.00 (Encl C, pg 11)
5/17/82	G. B. Roberts	100.00 (Encl C, pg 6)
10/6/82	" "	150.00 (Encl C, pg 11)
5/17/82	Charles T. Steele	125.00 (Encl C, pg 6)
10/6/82	" "	75.00 (Encl C, pg 12)
6/13/83	Steven Speno	100.00 (Encl C, pg 15)

Total Dollars Received from Koll Co. Employees: \$1,650.00.

## 4. Shirley Lewis, District 4.

2894 Lausanne Ct., San Jose, CA, 95132.

Occupation: Services of Spouse

Controlled Committee: Friends of Shirley Lewis, address same as residence.

Treasurer: Donna Kouzes, 980 Lakeshire Ct., San Jose, CA, 95126. (see Encl. D—3 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
11/3/83	Drew Gibson	\$180.00 (Encl D, pg 3) Food & Wine
11/3/83	Bill Benson	150.00 (Encl D, pg 3) Food & Wine
11/3/83	George Roberts	150.00 (Encl D, pg 3) Food & Wine
TOTAL		\$480.00

These contributions may have been the subject luncheon which was held at the Plateau 7.

## 5. Blanca Alvarado, District 4.

1411 Sunshadow Ln., San Jose, CA, 95116.

Occupation: Tax Consultant/Preparer

Controlled Committee: Friends of Blanca Alvarado, 650 N. 1st St., San Jose, CA, 95112.

Treasurer: Louis C. Castro, 650 N. 1st St., San Jose, CA, 95112. (see Encl. E—4 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
10/18/82	Steven G. Spano	\$100.00 (Encl E, pg 3)
10/18/82	William T. Benson	\$100.00 (Encl E, pg 3)
10/18/82	Robert A. Church	\$100.00 (Encl E, pg 3)
10/18/82	Drew Gibson	\$100.00 (Encl E, pg 3)
10/18/82	G. B. Roberts	\$100.00 (Encl E, pg 3)
10/18/82	Charles T. Steele	\$100.00 (Encl E, pg 4)
10/18/82	David Pogue	\$100.00 (Encl E, pg 4)
TOTAL		\$700.00

Total Dollars Received from Koll Co. Employees: \$700.00

## 6. Nancy Ianni, District 6

1759 Nomark Ct., San Jose, CA, 95125

Occupation: Services of Spouse

Committee: Citizens for Ianni, P.O. Box 8601, San Jose, CA, 95155.

Treasurer: Kenneth Brady, 1339 Dry Creek Rd., San Jose, CA, 95125. (see Encl. F—3 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
6/8/84	Drew Gibson	\$250.00 (Encl. F, pg 3)
Total Dollars Received from Koll Co. Employees: \$250.00.		

## 7. Patricia Sausedo, District 8.

2911 Queens Est., San Jose, CA, 95135.

Occupation: Services of Spouse

Controlled Committee: Committee to elect Pat Sausedo, same address as residence.

Treasurer: Carmen Nannep, 4347 Partridge Dr., San Jose, CA, 95121. (see Encl. G—17 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
10/23/81	Drew Gibson	\$100.00 (Encl G, pg 3)
9/22/82	" "	100.00 (Encl G, pg 6)
9/22/82	William Benson	100.00 (Encl G, pg 5)
3/6/85	The Koll Company	250.00 (Encl G, pg 17)
3/84	William Benson	<u>150.00</u> (Encl G, pg 14)

TOTAL \$700.00

Total Dollars Received from Koll Co. Employees: \$700.00



## 8. James T. Beall, District 9

1492 Kimberly Ct., San Jose, CA, (408) 269-7445.

Occupation: None listed.

Controlled Committee: Citizens for Jim Beall, 5506 Rudy Dr., San Jose, CA, 95124.

Treasurer: Madeleine Bunker, address same as committee's.  
(see Encl. H—20 -pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
2/1/80	Drew G. Gibson	\$ 15.00 (Encl H, pg 3)
4/9/80	" "	100.00 (Encl H, pg 3)
7-9/80	" "	200.00 (Encl H, pg 6)
7/3/81	" "	150.00 (Encl H, pg 9)
5/20/82	" "	150.00 (Encl H, pg 12)
9/12/84	" "	250.00 (Encl H, pg 15)
4/10/80	David Pogue	100.00 (Encl H, pg 3)
7/3/81	" "	100.00 (Encl H, pg 9)
5/20/82	" "	100.00 (Encl H, pg 12)
9/12/84	" "	250.00 (Encl H, pg 17)
7-9/80	Charles Steele	100.00 (Encl H, pg 6)
5/20/82	" "	100.00 (Encl H, pg 12)
7/3/81	Michael A. Perata	100.00 (Encl H, pg 8)
5/20/82	William T. Benson	100.00 (Encl H, pg 12)
9/6/84	Steven Speno	250.00 (Encl H, pg 16)
9/12/84	George Roberts	250.00 (Encl H, pg 17)

TOTAL \$2,315.00

Total Dollars Received from Koll Co. Employees: \$2,315.00.

## 9. Thomas A. McEnery, Mayor

44 Ayer Ave., San Jose, CA, 95113.

Occupation: None listed, extensive investment portfolio.

Controlled Committee: Citizens for Tom McEnery, 84 W. Santa Clara, #590, San Jose, CA, 95113

Treasurer: Patrick J. O'Brien, same address as committee.  
(see Encl. I—32 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
10/28/81	William T. Benson	\$ 100.00 (Encl I, pg 3)
3/29/82	" "	250.00 (Encl I, pg 15)
6/14/85	" "	320.00 (Encl I, pg 30)
10/22/81	Robert Church	100.00 (Encl I, pg 4)
5/13/82	" "	150.00 (Encl I, pg 16)
10/21/81	Drew Gibson	100.00 (Encl I, pg 5)
3/17/82	" "	250.00 (Encl I, pg 11)
1-5/83	" "	250.00 (Encl I, pg 23)
6/14/85	" "	320.00 (Encl I, pg 30)
10/29/81	David Pogue	100.00 (Encl I, pg 6)
3/29/82	" "	250.00 (Encl I, pg 15)
6/14/85	" "	320.00 (Encl I, pg 31)
10/28/81	George Roberts	100.00 (Encl I, pg 7)
5/13/82	" "	250.00 (Encl I, pg 17)
3-6/84	" "	150.00 (Encl I, pg 12)
3/17/82	Dianne Parata	250.00 (Encl I, pg 11)
3/17/82	Charles Steele	250.00 (Encl I, pg 12)
3/18/82	Steven Speno	125.00 (Encl I, pg 19)
6/14/85	" "	320.00 (Encl I, pg 32)
6/14/85	The Koll Company	160.00 (Encl I, pg 27)
6/14/85	Wendy Burdsall Kirst	160.00 (Encl I, pg 30)
	<b>TOTAL</b>	<b>\$4,275.00</b>

Total Dollars Received from Koll Co. Employees: \$4,275.00

Former Council members who recently exited office and accepted contributions from employees of the Koll Co.:

1. Claude Fletcher, former mayor and council member, District 10. 6090 Montoro Dr., San Jose, CA.

Occupation: None listed, extensive investment portfolio.

Committee: Fletcher Committee, same address as residence.

Treasurer: Joseph Sandoval, C.P.A., 366 E. Hamilton Ave., Campbell, CA, 95008.

(see Encl. J—14 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
4/15/82	Drew Gibson	\$ 150.00 (Encl J, pg 4)
5/13/82	" "	100.00 (Encl J, pg 4)
6/16/84	" "	250.00 (Encl J, pg 8)
4/14/85	" "	250.00 (Encl J, pg 14)
4/12/82	William T. Benson	150.00 (Encl J, pg 3)
6/14/84	Steven Speno	250.00 (Encl J, pg 7)
5/14/82	Dianne Perata	250.00 (Encl J, pg 9)
5/14/82	Charles Steele	100.00 (Encl J, pg 10)
5/14/85	The Koll Co.	250.00 (Encl J, pg 13)

Total Dollars Received from Koll Co. Employees: \$1,750.00.

2. Jerry T. Estruth, former council member, District 2.

P.O. Box 2347, San Jose, CA, 95109.

Left office November, 1983.

Occupation: None listed, extensive investment portfolio.

Controlled Committee: Estruth for San Jose!, same address as residence.

Treasurer: Kathy A. Ebright, 1863 Crewe Ct., San Jose, CA, 95132.

(see Encl. K—3 pages)

<u>Date</u>	<u>Contributor</u>	<u>Amount</u>
7/8/80	Drew Gibson	\$ 250.00 (Encl K, pg 3)
7/10/80	William T. Benson	100.00 (Encl K, pg 3)

Total Dollars Received from Koll Co. Employees: \$350.00.

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According to Mayor McEnery's secretary, Sylvia, Steven G. Speno worked for council member Lawrence Pegram, who held a council seat from 1975 to 1980. We were unable to locate any records to verify this information.

Investigation is continuing.

/s/ HAROLD K. LIPSET  
Harold K. Lipset

HKL/djg  
Enclosures (11)

**Appendix K**

Herbert F. Kaiser, Esq.  
Attorney at Law  
Suite 1250—Alcoa Building  
One Maritime Plaza  
San Francisco, CA 94111  
Telephone: (415) 392-2255  
Attorney for Plaintiffs

United States District Court  
Northern District of California  
CASE NO. C-84-20772 WAI  
Docket #106

Date: November 21, 1985

Time: 9:00 a.m.

Dept: Honorable William A. Ingram

David A. Boone and Stephen P. Fox, individually and as  
general partners of DSC-3 Group, a California Limited  
Partnership, as general partners of Market/Post, Ltd., a  
California Limited Partnership; Dave Goglio and Donald  
Goglio, individually and as general partners of Three G's, a  
California Limited Partnership,  
Plaintiffs,

vs.

Redevelopment Agency of the City of San Jose, a Public Body  
Corporate and Politic of the State of California; City of San  
Jose, a municipal corporation and subdivision of the State of  
California; Frank Taylor; The Koll Company, a California  
Corporation,  
Defendants.

**DECLARATION OF PLAINTIFF DAVID A. BOONE IN  
OPPOSITION TO MOTION TO EXPUNGE LIS  
PENDENS AND REQUEST FOR ATTORNEY'S FEES  
[Filed Nov. 7, 1985]**

Clerk's Record Docket No. 106

I, David Boone, hereby declare under penalty of perjury that I  
am one of the plaintiffs in this action, and that if called as a

witness, I could competently, accurately and truthfully testify of my own knowledge to the following:

8. After defendant Koll had filed this motion to expunge, I learned that in addition to the \$12,595 which is referred to in the Declaration of Herbert F. Kaiser in opposition to defendant City's Rule 11 motion, and which Koll, through its executives and employees, had paid to City officials, the Koll partners who were working on the Pueblo Uno project paid an additional \$15,570 to city officials. Therefore, we have discovered a total thus far of \$28,165 which Koll, its executives and partners on the Pueblo Uno project have paid to such officials, and investigation is continuing. I believe that they did this in order to accomplish their unlawful purpose. I also have discovered that city officials such as Jerry T. Estruth, who was City Councilman during the relevant time periods and who voted for the Koll project, has made substantial profits from Redevelopment Agency bonds which, although sold to finance the Koll project, were not needed because private investment would have accomplished the redevelopment. I attach hereto a copy of a memorandum concerning these newly discovered facts as Exhibit E.

**Exhibit B**

Downtown San Jose  
1995

Final Environmental Impact Report  
April, 1983  
City of San Jose  
Department of City Planning

Projects entirely or partially within the Core Area, and three proposed (Survey) areas. They do not, however, constitute all of the study area. The entire City is divided into Traffic Analysis Zones (TAZ's) which are used in assessing traffic impacts for the General Plan and for the City's Transportation Model. The TAZ's are smaller than census tracts; for the Downtown Core Area, most TAZ's are only one or two blocks in size (Figure 4). It is, therefore, convenient to use the TAZ grid as an easy coordinate system when discussing the Downtown.

**Redevelopment**

As mentioned earlier, an important part of the project is the Redevelopment Project Areas (Figure 6). Park Center Plaza and San Antonio Plaza are the City's oldest redevelopment projects and represent the greatest degree of public involvement and investment to date. Park Center Plaza is almost completely developed, although some limited additional office and parking construction may still occur.

San Antonio Plaza is still largely undeveloped and contains primarily vacant land. New State and Federal buildings are under construction at this time. In addition, developers have been designated for extensive new office, hotel, *retail* and residential projects within San Antonio. The analysis in this EIR assumes buildout of San Antonio Plaza. The environmental effects identified in the recent EIR/EIS done for San Antonio Plaza are considered as part of the background (approved) data against which further development Downtown was assessed.

Pueblo Uno is experiencing a great deal of development interest and activity at the present time and, despite its small size, is

expected to contribute significantly to the future construction activity.

Julian-Stockton, of which only a small part is in the Core Area, is primarily industrial in existing and planned uses. Very little new activity has taken place in Julian-Stockton other than expansion of FMC. The Redevelopment Agency is presently re-evaluating the area to identify a development strategy for encouraging further upgrading or redevelopment.

As shown in the 1995 Strategy Plan, two of the survey areas (1 & 2) are anticipated to contain almost entirely privately developed and redeveloped projects. Survey Area #1 will contain new high rise office buildings with some commercial uses. High density residential will be encouraged in its easterly block. Survey Area #2 is shown on both the General Plan and the 1995 Strategy Plan as more residential in nature. Both high and low rise commercial/office structures should develop between Market and Second Streets, but residential redevelopment is expected to predominate between Second and Fourth Streets.

The newly designated Guadalupe-Auzerais *Survey Area is planned to* include several major public projects. A new convention center complex of over 300,000 square feet and a library addition are planned on the south side of San Carlos Street. The convention center will be complemented by two planned hotels and a major office development on the same \* \* \*



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Exhibit E

KOLL

Gibson G. Jr.	McEnery	100.00	10/21/81
		250.00	03/17/82
		150.00	05/21/83
		100.00	05/21/83
		500.00	03/19/84
		320.00	06/14/85
Gibson G. Jr.	Alvarado	100.00	10/18/82
Gibson G. Jr.	Beal	15.00	02/01/80
		100.00	04/09/80
		200.00	09/23/80
		150.00	07/03/81
		150.00	05/20/82
		250.00	09/12/84
Gibson G. Jr.	Estruth	250.00	07/08/80
Gibson G. Jr.	Fletcher	150.00	04/15/82
		100.00	05/13/82
		250.00	06/16/84
		250.00	04/14/85
Gibson G. Jr.	Hammer	150.00	04/27/82
		150.00	04/18/84
Gibson G. Jr.	Ianni	250.00	06/08/84
Gibson G. Jr.	Lewis	180.00	11/03/83
Gibson G. Jr.	Ryden	125.00	04/28/85
Gibson G. Jr.	Sausedo	100.00	10/23/81
		100.00	09/22/82
		100.00	08/03/83
	Subtotal	4,540.00	
Benson W.T.	McEnery	50.00	03/05/80
		100.00	10/28/81
		250.00	03/29/82
		250.00	05/21/83
		150.00	03/19/84
		320.00	06/14/85
Benson W.T.	Alvarado	100.00	10/18/82
Benson W.T.	Beal	100.00	05/20/82
		250.00	09/12/84
Benson W.T.	Estruth	100.00	07/10/80
Benson W.T.	Fletcher	150.00	04/12/82
Benson W.T.	Hammer	125.00	04/12/82
		75.000	10/06/82
		100.00	06/13/83
		100.00	04/04/84

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Benson W.T.	Lewis	95.00	10/31/80
		150.00	11/03/83
Benson W.T.	Ryden	125.00	04/28/85
Benson W.T.	Sausedo	100.00	09/22/82
		150.00	03/00/84
	Subtotal	2,840.00	
Roberts G.B.	McEnery	50.00	03/05/80
		100.00	10/28/81
		250.00	05/13/82
		500.00	05/19/84
Roberts G.B.	Alvarado	100.00	10/18/82
Roberts G.B.	Beal	250.00	09/12/84
Roberts G.B.	Hammer	100.00	05/17/82
		150.00	10/06/82
Roberts G.B.	Lewis	150.00	11/03/83
Roberts G.B.	Lewis	150.00	11/03/83
Roberts G.B.	Sausedo	100.00	09/22/82
	Subtotal	1,900.00	
Pogue, D.L.	MCEnergy	50.00	03/05/80
		100.00	10/28/81
		250.00	03/29/82
		250.00	05/21/83
		320.00	06/14/85
Pogue D.L.	Alvarado	100.00	10/18/82
Pogue D.L.	Beal	100.00	04/10/80
		100.00	07/03/81
		100.00	05/02/82
		250.00	09/12/84
Pogue D.L.	Fletcher	250.00	04/14/85
Pogue D.L.	Hammer	125.00	04/26/82
		75.00	10/06/82
Pogue D.L.	Sausedo	100.00	09/22/82
		150.00	03/00/84
	Subtotal	2,320.00	
Kirst W.B.	McEnery	160.00	06/14/85
	Subtotal	160.00	
Koll Company	McEnery	200.00	03/04/80
		160.00	06/14/85
Koll Company	Estruth	325.00	05/29/79
Koll Company	Fletcher	250.00	05/14/82
		250.00	05/14/85
Koll Company	Putman	100.00	11/19/84
Koll Company	Sausedo	250.00	06/80/85
	Subtotal	1,535.00	

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Speno S.G.	McEnery		100.00	03/04/80
			125.00	03/18/82
			250.00	05/21/83
			320.00	06/14/85
Speno S.G.	Alvarado		100.00	10/18/82
Speno S.G.	Beal		250.00	09/06/84
Speno S.G.	Fletcher		250.00	06/14/84
Speno S.G.	Hammer		100.00	06/13/83
Speno S.G.	Sausedo		100.00	06/02/83
			50.00	09/22/82
Speno S.G.	Stabile		100.00	10/12/84
	Subtotal	1,745.00		
Church Robert & Eleanor	McEnery		50.00	03/06/80
			100.00	10/22/81
			150.00	05/13/82
Church Robert & Eleanor	Alvarado		100.00	10/18/82
Church Robert & Eleanor	Hammer		125.00	04/12/82
			75.00	10/06/82
Church Robert & Eleanor	Sausedo		100.00	10/23/81
		Subtotal	700.00	
Perata Dianne	McEnery		250.00	03/17/82
Perata Michael	Beal		100.00	07/03/81
Perata Dianne	Fletcher		250.00	05/14/82
	Subtotal	600.00		
Steele Charles	McEnery		50.00	03/06/80
			250.00	03/17/82
			250.00	05/21/83
Steele Charles	Alvarado		100.00	10/18/82
Steele Charles	Beal		100.00	09/23/80
			100.00	05/20/82
Steele Charles	Fletcher		100.00	05/14/82
Steele Charles	Hammer		125.00	05/17/82
			75.00	10/06/82
Steele Charles	Lewis		95.00	10/31/80
Steele Charles	Sausedo		100.00	09/22/82
	Subtotal	1,345.00		
	Total	17,685.00		

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## Nolte-Market Street

Nolte G.S. JR.	McEnergy	200.00	09/19/79
		100.00	02/26/80
		1,250.00	03/19/83
		500.00	03/12/84
		320.00	06/14/85
Nolte G.S. Jr.	Estruth	150.00	03/26/81
Nolte G.S. Jr.	Fletcher	225.00	03/30/82
		100.00	06/11/84
Nolte G.S. Jr.	Ianni	100.00	03/09/84
Nolte G.S. Jr.	Lewis	100.00	03/25/81
		250.00	10/05/83
		180.00	03/07/85
		100.00	06/02/84
Nolte G.S. Jr.	Putnam	200.00	05/24/83
Nolte G.S. Jr.	Sausedo	200.00	10/02/84
Nolte G.S. Jr.	Stabile		
	Subtotal	3,975.00	
Bryer R.L.	Estruth	300.00	03/23/81
Bryer R.L.	Lewis	100.00	01/15/84
	Subtotal	400.00	
	Total	4,375.00	

## Westwood Company-Market Street

Westwood Company	McEnergy	500.00	05/10/84
		Subtotal	500.00
Morici Anthony C. Trustee	McEnergy	500.00	02/25/80
		500.00	09/17/81
		250.00	05/10/84
Morici Anthony C. Trustee	Lewis	125.00	09/16/83
		100.00	04/12/84
		Subtotal	1,475.00
Marino Marianne Trustee	McEnergy	100.00	09/17/81
		250.00	05/10/84
		Subtotal	350.00
McNamef Carol Trustee	Ryden	100.00	05/10/82
		Subtotal	100.00
Hallgrimson S.L.	McEnergy	100.00	09/27/81
		500.00	05/21/83
Hallgrimson S.L.	Estruth	500.00	05/01/79
Hallgrimson S.L.	Hammer	150.00	05/17/82
Hallgrimson S.L.	Sausedo	250.00	04/00/84

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Subtotal 1,500.00

McCarthy J.A.  
(McCarthy Gertrude  
1117 Rankin Ave.  
S.J.)

McEnergy 100.00 12/31/81  
Subtotal 100.00

The Westwood II McEnergy 300.00 09/17/81

Subtotal 300.00  
Total 4,325.00

## HFJA-Pueblo Uno

Danner A.E. Hammer 200.00 06/03/82  
80.00 09/24/82  
100.00 03/15/84

Subtotal 380.00

Elfving W.J. McEnergy 50.00 08/29/79

Elfving W.J. Hammer 50.00 08/16/82

100.00 02/29/84

Elfving W.J. Hammer 50.00 08/16/82

100.00 02/29/84

Subtotal 350.00

Whyte R.M. McEnergy 50.00 05/21/83

500.00 03/19/83

500.00 03/19/84

Subtotal 1,050.00

Total 1,780.00

Grand Total 28,165.00

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McEnery

The Westwood II has the same address as A.C. Morici in the Westwood Co. Robert M. Tobin Atr. with HFJA donated \$500.00 on 02/21/80 Barry Trailer Eng. for Nolte donated \$100.00 on 03/07/80R Henry Aiassa Properties \$125.00 05/21/83, \$320.00 on 05/30/85 same Aiassa family

Blanca Alvarado

Alverado Tax Service changed on April 1984 report to Alverado Consultant Service and now deals in real estate also

James Beal

(Young R. Investor land use consultant service <1000.00 >10000.00 fee) 02/09/81 04/01/82 acquired Bank of America stock 4/14/84 >1000.00 & <10000.00 disposed of on 6/4/84

Jerry T. Estruth

Obtained San Jose Redevelopment Agency Bonds 4/83 >\$1000.00 but <\$10,000.00 sold 6/84.

Claude Fletcher

Westwood Company-Market Street  
W.R. Costello Co. donated \$100.00 on 06/16/84 is it related to Costello W.C. 3/30/84 721 statement indicates that he was salaried by Pacific Telephone to do telephone system sales income >\$10,000.00.

Hammer

Koll

Laguna Street Inc. donated \$250.00 on 09/22/82 are they the same as Laguna Avenue Assoc.

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Lewis

Westwood Company-Market Street  
O'Brien, Offereins, & Hallgrimson donated \$250.00 on 9/16/83

Putnam

Westwood Company-Market Street  
O'Brien, Offereins, & Hallgrimson donated \$250.00 on 6/3/84

Patricia Sausedo

Westwood Company-Market Street  
Maurice Abraham Eng. for Nolte \$250.00 on 3/9/84

**Appendix L**

**Addendum of Statutes**

**15 U.S.C.A. § 1**

Trusts, etc., in restraint of trade illegal; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

July 2, 1890, c. 647 § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94-145, § 2, 89 Stat. 801.

**15 U.S.C.A. § 2**

Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.



## 42 U.S.C.A. § 1983

## Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

§ 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

## (a) Prohibition in general

No damages, interest on damages, costs, or attorney's fees may be recovered under section 15, 15a, or 15c of this title from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98-544 § 3, Oct. 24, 1984, 98 Stat. 2750.)

U.S. CONSTITUTION, 14th AMENDMENT  
AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 33032. Factors indicating economic dislocation, deterioration, or disuse

A blighted area is characterized by properties which suffer from economic dislocation, deterioration, or disuse because of one or more of the following factors which cause a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical, social, or economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise acting alone:

(a) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(b) The laying out of lots in disregard of the contours and other topography or physical characteristics of the ground and surrounding conditions.

(c) The existence of inadequate public improvements, public facilities, open spaces, and utilities which cannot be remedied by private or governmental action without redevelopment.

(d) A prevalence of depreciated values, impaired investments, and social and economic maladjustment.

(e) The existence within the Lake Tahoe basin of substandard public or private facilities and improvements, insufficient open space, or water quality protection systems which do not comply with the environmental threshold carrying capacities established by the Tahoe Regional Planning Agency and the regional plan in

accordance with the Tahoe Regional Planning Compact set forth in Section 66801 of the Government Code.

§ 33035. Public injury from blighted area

It is further found and declared that:

(a) The existence of blighted areas characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the State.

(b) Such blighted areas present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of police power.

(c) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution, and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire, and accident protection and other public services and facilities.

(d) This menace is becoming increasingly direct and substantial in its significance and effect.

(e) The benefits which will result from the remedying of such conditions and the redevelopment of blighted areas will accrue to all the inhabitants and property owners of the communities in which they exist.

(Added by Stats. 1963, c. 1812, p. 3680, § 3.)

§ 33037. Appropriate means of redevelopment; Eminent domain; Expenditure of public money

For these reasons it is declared to be the policy of the State:

(a) To protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the communities in which they exist by remedying such injurious conditions through the employment of all appropriate means.

(b) That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.

(c) That the redevelopment of blighted areas and the provisions for appropriate continuing land use and construction policies in them constitute public uses and purposes for which public money may be advanced or expended and private property acquired, and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the State and of the communities in which the areas exist.

(d) That the necessity in the public interest for the provisions of this part is declared to be a matter of legislative determination.

Added Stats 1963 ch 1812 § 3.

§ 33131. Plans; dissemination of information; applications for federal programs and grants

An agency may:

(a) From time to time prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas.

(b) Disseminate redevelopment information.

(c) Prepare applications for various federal programs and grants relating to housing and community development and plan and carry out such programs within authority otherwise granted by this part, at the request of the legislative body.

(Added by Stats. 1963, c. 1812, p. 3685, § 3. Amended by Stats. 1969, c. 1561, p. 3167, § 1.)

§ 33220. Powers of public bodies

For the purpose of aiding and co-operating in the planning, undertaking construction or operation of redevelopment projects

located within the area in which it is authorized to act, any public body, upon the terms and with or without consideration as it determines, may:

(a) Dedicate, sell, convey, or lease any of its property to a redevelopment agency.

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with redevelopment projects.

(c) Furnish, dedicate, close, vacate, pave, install, grade, re-grade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake.

(d) Plan or replan, zone or rezone any part of such area and make any legal exceptions from building regulations and ordinances.

(e) Enter into agreements with the federal government, an agency, or any other public body respecting action to be taken pursuant to any of the powers granted by this part or any other law; such agreements may extend over any period, notwithstanding any law to the contrary.

(f) Purchase or legally invest in any of the bonds of an agency and exercise all of the rights of any holder of such bonds.

(g) Purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan, and in connection therewith, is hereby authorized to become obligated in accordance with Section 33437 except that subdivision (b) of Section 33437 shall apply to a public body only to the extent that it is authorized (and funds have been made available) to make the redevelopment improvements or structures required.

(Added by Stats. 1963, c. 1812, p. 3687, § 3.)

§ 33341. Bonds; expenditure of proceeds; repayment

Redevelopment plans may provide for the agency to issue bonds and expend the proceeds from their sale in carrying out the redevelopment plan. If such an issuance is provided for, the redevelopment plan shall also contain adequate provision for the

payment of principal and interest when they become due and payable.

(Added by Stats. 1963, c. 1812, p. 3691, § 3.)

§ 33342. Acquisition of real property

Redevelopment plans may provide for the agency to acquire by gift, purchase, lease, or condemnation all or part of the real property in the project area.

(Added by Stats. 1963, c. 1812, p. 3691, § 3.)

§ 33352. Report accompanying redevelopment plan; Contents

Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following:

(a) The reasons for the selection of the project area, a description of the specific projects then proposed by the agency, a description of how these projects will improve or alleviate the conditions described in subdivision (b), and, if public improvements are to be made by the agency, an explanation of why the public improvements cannot be reasonably expected to be accomplished by private enterprise acting alone.

(b) A description of the physical, social, and economic conditions existing in the area.

(c) The proposed method of financing the redevelopment of the project area in sufficient detail so that the legislative body may determine the economic feasibility of the plan.

(d) A method or plan for the relocation of families and persons to be temporarily or permanently displaced from housing facilities in the project area, which method or plan shall include the provision required by Section 33411.1 that no persons or families of low and moderate income shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by the displaced person or family at rents comparable to those at the time of their displacement.

(e) An analysis of the preliminary plan.



(f) The report and recommendations of the planning commission.

(g) The summary referred to in Section 33387.

(h) The report required by Section 65402 of the Government Code.

(i) The report required by Section 21151 of the Public Resources Code.

(j) The report of the county fiscal officer as required by Section 33328.

(k) The report of the fiscal review committee, if any.

(l) If the project area contains low- or moderate-income housing, a neighborhood impact report which describes in detail the impact of the project upon the residents of the project area and the surrounding areas, in terms of relocation, traffic circulation, environmental quality, availability of community facilities and services, effect on school population and quality of education, property assessments and taxes, and other matters affecting the physical and social quality of the neighborhood. The neighborhood impact report shall also include all of the following:

(1) The number of dwelling units housing persons and families of low or moderate income expected to be destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project.

(2) The number of persons and families of low or moderate income expected to be displaced by the project.

(3) The general location of housing to be rehabilitated, developed, or constructed pursuant to Section 33413.

(4) The number of dwelling units housing persons and families of low or moderate income planned for construction or rehabilitation, other than replacement housing.

(5) The projected means of financing the proposed dwelling units for housing persons and families of low and moderate income planned for construction or rehabilitation.

(6) A projected timetable for meeting the plan's relocation, rehabilitation, and replacement housing objectives.

(m) An analysis by the agency of the report submitted by the county as required by Section 33328, which shall include a summary of the consultation of the agency, or attempts to consult by the agency, with each of the taxing agencies as required by Section 33328; and an analysis by the agency of the report of the fiscal review committee, if any, which shall include the agency's response to the report of the fiscal review committee, additional information, if any, and, at the discretion of the agency, proposed mitigation measures.

Added Stats 1963 ch 1812 § 3; Amended Stats 1965 ch 1665 § 24; Stats 1972 ch 324 § 1; Stats 1976 ch 1337 § 9; Stats 1978 ch 854 § 1; Stats 1984 ch 147 § 6.

§ 33433. Approval by legislative body as to sale or lease of property acquired with tax increments; Hearing; Application to sale or lease of small housing project

(a) Except as provided in subdivision (c), before any property of the agency acquired in whole or in part, directly or indirectly, with tax increment moneys is sold or leased for development pursuant to the redevelopment plan, the sale or lease shall first be approved by the legislative body after public hearing. Notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two successive weeks prior to the hearing.

The agency shall make available for public inspection and copying at a cost not to exceed the cost of duplication:

(1) A copy of the proposed sale or lease.

(2) A summary which describes and specifies all of the following:

(A) The cost of the agreement to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the agreements.



(B) The estimated value of the interest to be conveyed or leased, determined at the highest uses permitted under the plan.

(C) The purchase price or sum of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

(b) The report shall be made available to the public no later than the time of publication of the first notice of the hearing mandated by this section. The resolution approving the lease or sale shall be adopted by a majority vote unless the legislative body has provided by ordinance for a two-thirds vote for that purpose and shall contain findings that the consideration is not less than fair market value in accordance with covenants and conditions governing the sale or lease or, with respect to any sale or lease at less than estimated value, determined at the highest use permitted under the plan, that the lesser consideration is necessary to effectuate the purposes of the plan.

(c) At the election of the legislative body, subdivisions (a) and (b) shall not apply to the sale or lease of a small housing project, as defined by Section 33013. If the legislative body so elects, the agency shall, instead, hold a public hearing in conformity with the requirements of subdivision (a) and shall also report the sale or lease to the legislative body on or before 30 days after the end of the agency's fiscal year during which the sale or lease occurred. The report shall disclose the name of the buyer, the legal description or street address of the property, the date of the sale or lease, the consideration for which the property was sold or leased by the agency to the buyer or lessee, and the date on which the agency held its public hearing for the sale or lease pursuant to Section 33431.

As used in this subdivision and Section 33413, "persons and families of low or moderate income" has the same meaning as defined by Section 50093.

Amended Stats 1987 ch 935 § 2.

§ 33450. Authority to amend; recommendation

If at any time after the adoption of a redevelopment plan for a project area by the legislative body, it becomes necessary or desirable to amend or modify such plan, the legislative body may by ordinance amend such plan upon the recommendation of the agency. The agency recommendation to amend or modify a redevelopment plan may include a change in the boundaries of the project area to add land to or exclude land from the project area. Except as otherwise provided in Section 33378, the ordinance shall be subject to referendum as prescribed by law for the ordinances of the legislative body.

(Amended by Stats.1977, c. 797, p. 2446, § 11.)

§ 56035. Notice to property owners and public entities

(a) In addition to the notice required pursuant to Section 56034, the legislative body shall provide notice of the hearing and proposed plan to all persons, including businesses, corporations, or other public or private entities, shown on the last equalized assessment roll as owning real property within 300 feet of the property which is included within the plans and to each city, county, or city and county contiguous to the proposed site.

(b) The notice required by this section shall be given by at least one of the following methods:

(1) Direct mailing to the owners.

(2) Posting of notice by the legislative body on and off the site in the area where the large scale urban development is to be located.

(3) Delivery of notice by any means other than mail to the owners.

(4) Any other method reasonably calculated by the legislative body to provide actual notice of the hearing.

(5) Nothing in this section shall preclude the legislative body from providing additional notice by other means.

Added Stats 1982 ch 1228 § 1.

§ 56040. Designation of lead agency; Certification of environmental impact report; When subsequent or supplemental report required

The legislative body is hereby designated the lead agency and shall certify an environmental impact report in accordance with the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving a large scale urban development. When an environmental impact report has been certified for a large scale urban development pursuant to this section, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency unless one or more of the following events occur:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a legislative body made at a public hearing pursuant to this section unless he or she has participated in that public body failed to give notice of the public hearing as required by law. For purposes of this provision, a person has participated in the public hearing if he or she has submitted either oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

Added Stats 1982 ch 1228 § 1

§ 6. Public credit and gifts; Subscriptions of corporate stock; Temporary transfer of local funds

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be

hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation district for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1)

farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, building, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

And Provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year not after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.

§ 33500. Time to bring action attacking redevelopment plan

No action attacking or otherwise questioning the validity of any redevelopment plan, or amendment to a redevelopment plan, or the adoption or approval of such plan, or amendment, or any of the findings or determinations of the agency or the legislative body in connection with such plan shall be brought prior to the adoption of the redevelopment plan nor at any time after the elapse of 60 days from and after the date of adoption of the ordinance adopting or amending the plan.

The amendments made to this section at the 1977-78 Regular Session of the Legislature do not represent a change in, but are declaratory of, existing law.

Added Stats 1963 ch 1812 § 3; Amended Stats 1977 ch 797 § 13.

